

**In The Matter Of:**

***In re: THE FAIRCHILD CORPORATION***

---

**ARBITRATION**

***January 10, 2007***

---

***MERRILL LEGAL SOLUTIONS***

***420 Lexington Avenue - Suite 2108***

***New York, NY 10170***

***PH: 212-557-7400 / FAX: 212-692-9171***

**ARBITRATION - Vol. 3**

CPR INSTITUTE OF DISPUTE RESOLUTION

-----x

In Re

THE FAIRCHILD CORPORATION

Claimant,

-against-

ALCOA CORPORATION,

Respondent.

-----x

Cravath, Swaine & Moore, LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York

January 10, 2007

9:00 a.m.

B E F O R E:

JAMES F. STAPLETON, Arbitrator

TAMMEY M. PASTOR, RPR, CLR, Hearing Reporter

Page 830

1 JOHN GEORGE - REDIRECT  
 2 Q. Turn to page 577.  
 3 A. Yes.  
 4 Q. Under Assessments of Remediation  
 5 Liabilities. It says "M Hodge agrees with our  
 6 assessments remediation issues are significant,  
 7 but only 14 of the 15 manufacturing facilities  
 8 to warrant Phase II investigation." Do you see  
 9 that?  
 10 A. Yes.  
 11 Q. You typed that in as he said it;  
 12 didn't you?  
 13 A. Yes.  
 14 Q. He also said, so Mr. Hodge was  
 15 telling you it was appropriate to do these Phase  
 16 II?  
 17 A. Yes.  
 18 Q. Did he also tell you at the meeting  
 19 his client, Fairchild didn't want to pay for  
 20 them?  
 21 A. I don't recall.  
 22 Q. Well, earlier Mr. Zurofsky said  
 23 Fairchild might refuse to pay for them; you saw  
 24 that?  
 25 A. This is on --

Page 831

1 JOHN LEASE - DIRECT  
 2 Q. Turn to page 576 under Who Pays?  
 3 A. Right. That was with reference to  
 4 Alcoa's rationale for taking remedial action  
 5 which I would distinguish from conduct of the  
 6 Phase IIs.  
 7 MR. SLIFKIN: Okay, thank you very  
 8 much, sir.  
 9 MR. ZUROFSKY: Nothing further.  
 10 THE ARBITRATOR: Thank you very  
 11 much.  
 12 (Witness excused.)  
 13  
 14 (Luncheon Recess: 12:08 p.m.)  
 15 AFTERNOON SESSION  
 16 1:03 p.m.  
 17  
 18 MR. CHESLER: We call John Lease.  
 19 JOHN LEASE,  
 20 having been first duly sworn by the Notary  
 21 Public (Tammey M. Pastor), was examined and  
 22 testified as follows:  
 23 DIRECT-EXAMINATION BY MR. CHESLER:  
 24 Q. Would you state your full name for  
 25 the record, please.

Page 832

1 JOHN LEASE - DIRECT  
 2 A. John Lease.  
 3 Q. And by whom are you employed, Mr.  
 4 Lease?  
 5 A. Employed by Alcoa.  
 6 Q. What is your job at Alcoa?  
 7 A. I am the environmental group  
 8 services leader.  
 9 Q. What generally speaking are your  
 10 responsibilities as environmental group services  
 11 leader?  
 12 A. My role with Alcoa is to manage a  
 13 group of environmental professionals that act as  
 14 internal consultants to Alcoa and support  
 15 various environmental service areas, such as air  
 16 management, air compliance, solid and hazardous  
 17 waste management compliance, water and waste  
 18 water compliance as examples.  
 19 Q. Are you within a larger services  
 20 organization within Alcoa?  
 21 A. Yes, I am.  
 22 Q. What is the name of that  
 23 organization?  
 24 A. The organization is called the  
 25 environment health & safety services group.

Page 833

1 JOHN LEASE - DIRECT  
 2 Q. Is the acronym for that EHS?  
 3 A. EHSS.  
 4 Q. What is the second S for, services?  
 5 A. Services.  
 6 Q. It is environmental, health and  
 7 safety services?  
 8 A. Correct.  
 9 Q. Is there a single person who is the  
 10 director or manager of the EHSS group?  
 11 A. Yes. There is a director position  
 12 in that organization.  
 13 Q. Who holds that job right now?  
 14 A. Currently that is held by Kevin  
 15 McKnight.  
 16 Q. Is he your boss?  
 17 A. Yes, he is.  
 18 Q. Do you have a counterpart for  
 19 health who reports to Mr. McKnight?  
 20 A. Yes, there is.  
 21 Q. Is there a counterpart for safety?  
 22 A. Yes.  
 23 Q. So the E, the H and S all then  
 24 report into Mr. McKnight?  
 25 A. That's correct.

40 (Pages 830 to 833)

Page 834

1 JOHN LEASE - DIRECT  
2 Q. Were you involved personally in the  
3 negotiations of the acquisition by Alcoa of the  
4 Fairchild Fasteners business?  
5 A. No.  
6 Q. Were you involved in the due  
7 diligence that Alcoa did in connection with that  
8 transaction?  
9 A. No.  
10 Q. Did there come a point when you  
11 were in any way involved in the assumption of  
12 the Fasteners business by Alcoa from Fairchild?  
13 A. No.  
14 Q. At some point did you become the  
15 representative of Alcoa pursuant to the  
16 Acquisition Agreement that was entered into in  
17 December of 2002?  
18 A. Yes.  
19 Q. When did that happen,  
20 approximately?  
21 A. I don't recall specifically. I  
22 believe it was early in 2003 or shortly after  
23 the acquisition was finalized.  
24 Q. How did you come to assume that  
25 position?

Page 835

1 JOHN LEASE - DIRECT  
2 A. I was assigned to be the contact by  
3 Jim Boyt who was my supervisor at the time.  
4 Q. Mr. Boyt testified here the other  
5 day, same man?  
6 A. Yes.  
7 Q. What is your understanding of what  
8 your responsibilities are in that position?  
9 A. My understanding was that I was to  
10 be the point of contact for communication with  
11 my counterpart at Fairchild. To send and  
12 receive information relative to environmental  
13 health and safety matters.  
14 Q. When you first took that position,  
15 I think you said it was beginning 2003; is that  
16 right?  
17 A. Approximately.  
18 Q. Who was your counterpart at  
19 Fairchild at that point?  
20 A. A gentleman by the name of Mike  
21 Hodge.  
22 Q. Did he remain your counterpart  
23 thereafter up until today?  
24 A. Actually after the acquisition,  
25 after I was named as the contact I didn't hear

Page 836

1 JOHN LEASE - DIRECT  
2 from Mike Hodge in reply to the correspondence  
3 that I sent to him relative to my role as the  
4 contact point person.  
5 Q. You never did hear from Mr. Hodge?  
6 A. I received no phone calls, no  
7 correspondence directly back from Mike.  
8 Q. Did you ever have any  
9 communications with anybody else at Fairchild,  
10 other than Mr. Hodge?  
11 A. Yes. There were several people  
12 that responded to correspondence from me. The  
13 first person was Donald Miller. He was followed  
14 by a gentleman named Ernesto Beckford. Most  
15 recently a woman Susan Hall.  
16 Q. From 2003 until today you have  
17 consistently been the Alcoa representative  
18 pursuant to the Acquisition Agreement; is that  
19 right?  
20 A. That's correct.  
21 Q. On the Fairchild side you have gone  
22 through Hodge, Miller, Beckford and now Hall, is  
23 that the order in which they seem to have  
24 replaced each other?  
25 A. Yes.

Page 837

1 JOHN LEASE - DIRECT  
2 Q. I'd like you to look at tab 1.  
3 Would you look at tab 1 in the binder I've just  
4 handed you, Mr. Lease. Can you tell us what  
5 that document is this is Exhibit 31 for the  
6 record, Alcoa 31.  
7 A. This is a draft agenda for a  
8 meeting that was held between myself, and Mike  
9 Hodge as well as two other individuals from  
10 Fairchild, Tony Miramadi and Matilda Enriquez  
11 some time in the neighborhood of September 2002.  
12 Q. Just to get the chronology right,  
13 the agreement between Fairchild and Alcoa was  
14 signed in July of 2002 is that consistent with  
15 your understanding?  
16 A. Yes.  
17 Q. The deal closed in December; is  
18 that right?  
19 A. Yes.  
20 Q. You say you took on responsibility  
21 of being the contact person on the Alcoa side,  
22 you think at the beginning of 2003; correct?  
23 A. That's my recollection, yes.  
24 Q. So at the time of September of  
25 2002, after the signing of the agreement before

41 (Pages 834 to 837,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 838

JOHN LEASE - DIRECT

the closing and before you took on that role that you served in since, what was your reason for participating in this meeting with Fairchild representatives?

A. Within Alcoa we had established an integration team for the acquisition of Fairchild. I was the EHS representative on the acquisition team or on the integration team. And in that role I did have communications or discussions with Mike Hodge during the period from roughly, I would say mid-August through the end of the acquisition period, which was early December of 2002.

This meeting was set up to allow us to meet with Mike and a couple of his representatives in the EHS program area. And find out more about the Fairchild EHS programs. Discuss some of the issues that had arisen from the Phase I investigations, Phase I assessments that had been performed earlier that year by ERM.

And to talk about the possibility of going forward with some site visits at the locations before the closing.

Page 839

JOHN LEASE - DIRECT

Q. Who prepared this draft agenda?

A. I think it was jointly prepared between Mike and myself.

Q. I notice in the heading, the title of the agenda, Alcoa/Fairchild Industries EHS Integration Meeting. In at least the first six of the numbered -- I guess in seven of the numbered nine entries, numbers 1 through 6 plus number 9, the acronym EHS appears; is that right?

A. Yes.

Q. Did you believe that you and Mr. Hodge had an understanding of what EHS stood for?

A. Yes, I think so.

Q. Was the term used at this meeting that you had in September of 2002?

A. Yes, it was.

Q. What was the term used to mean both in the preparation of the agenda and in the meeting you all had in September of 2002?

A. Well the term, we understood the term to mean EHS function, which was comprised of environment, health and safety within the

Page 840

JOHN LEASE - DIRECT

companies.

Q. Was there any discussion that in this context health and safety was in any way limited to environmentally related health and safety issues?

A. No.

Q. How did you understand, for example, safety issues, what are things that are included within the meaning of safety as it was used in the discussions between Alcoa and Fairchild in the fall of 2002?

A. Safety was meant to mean or included workplace safety, primarily because we were both industrial firms and both regulated by OSHA. And workplace safety was the same as the term safety, the word safety.

Q. What sort of safety issues, for example, would be included under that heading?

A. Programs such as confined space entry, machine guarding, mobile equipment, fall protection, electrical safety, as examples of some of those.

Q. Would you look at tab 2, please. For the record this is Alcoa Exhibit 101. If

Page 841

JOHN LEASE - DIRECT

you look at the first page of Exhibit 101, it looks like there are two separate emails. I would like to start with the lower of the two. Is that an email that you received from Michael Hodge of Fairchild on or about September 6, 2002?

A. Yes.

Q. It says in the text of the email, "John" addressed to you "Tony Miramadi" now he was a Fairchild employee; correct?

A. Yes, Tony was the EHS director for the programs in the California facilities located in Los Angeles. Tony was at the meeting in September along with Mike.

Q. You say, he was the EHS director. That was as far as you understood his job at Fairchild prior to the sale of the business to Alcoa?

A. Yes.

Q. The note says "John, Tony Miramadi passed on to me your request for a copy of the slide presentation which we used during the EHS integration meeting here at Dulles earlier this week." It goes on to say, "I am enclosing an

42 (Pages 838 to 841)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 842

1 JOHN LEASE - DIRECT  
 2 electronic version."  
 3 Had you asked for a copy of the  
 4 slide presentation that Fairchild had made to  
 5 Alcoa at the meeting?  
 6 A. Yes.  
 7 Q. Then I see above that it appears  
 8 that there is a note from Donald Miller to Mr.  
 9 Beckford, Mr. Flynn and others. I take it that  
 10 is not a note that you saw at the time; is it?  
 11 A. Yes, that's what I recall.  
 12 Q. Let's look at the slides that Mr.  
 13 Hodge sent to you. Are these in fact slides  
 14 that were presented by the Fairchild folks at  
 15 that meeting in September 2002?  
 16 A. Yes, they are.  
 17 Q. If you look at the second page of  
 18 the slides, which is the Bates page 9443 is that  
 19 an organization chart which purports to be for  
 20 the Fairchild EHS management approach, their  
 21 organization and structure?  
 22 A. Yes.  
 23 Q. They presented that to you at the  
 24 meeting?  
 25 A. Yes, they did.

Page 843

1 JOHN LEASE - DIRECT  
 2 Q. Apparently Mr. Miramadi's title at  
 3 the time was director EHS U.S. operations;  
 4 correct?  
 5 A. Correct.  
 6 Q. He had under him reporting to him  
 7 various people who had environmental  
 8 responsibilities as well as safety  
 9 responsibilities; is that right?  
 10 A. That's right.  
 11 Q. If you look at the next page of the  
 12 presentation they made to you 9444. It is  
 13 entitled Fairchild Fasteners EHS Management  
 14 Approach Policies and Standards. It says  
 15 "Fairchild has developed environmental health  
 16 and safety policies --"  
 17 THE ARBITRATOR: Which page are we  
 18 on?  
 19 MR. CHESLER: Sorry --  
 20 THE ARBITRATOR: I have it okay.  
 21 Q. It says "Fairchild has developed  
 22 environmental health and safety policies based  
 23 on" then it lists four things "Best management  
 24 practices, federal state and local agency  
 25 regulations, ISO 9000 and the EHS vision

Page 844

1 JOHN LEASE - DIRECT  
 2 statement."  
 3 Did you have an understanding what  
 4 they were referring to by best management  
 5 practices?  
 6 A. I think in a general sense they  
 7 were practices that had been developed at the  
 8 various facilities owned by Fairchild at that  
 9 time that related to various aspects of their  
 10 EHS program.  
 11 Q. Did you understand their best  
 12 management practices to be somehow distinct from  
 13 federal, state and local agency regulations and  
 14 the other items on this list?  
 15 A. That was my basic understanding,  
 16 yes.  
 17 Q. Did they also talk about an EHS  
 18 vision statement at Fairchild?  
 19 A. Yes.  
 20 Q. What was that?  
 21 A. That's basically the next slide in  
 22 the presentation which described their approach  
 23 to EHS within Fairchild, assigned certain roles  
 24 and responsibilities to various individuals and  
 25 defined what their objectives were in a general

Page 845

1 JOHN LEASE - DIRECT  
 2 sense related to EHS.  
 3 Q. As stated here that included not  
 4 just protecting the environment but providing an  
 5 incident free workplace, meeting regulatory and  
 6 company standards and addressing community  
 7 concerns; correct?  
 8 A. That's correct.  
 9 Q. If you flip to page 9451, please,  
 10 this is under heading of Key Ehs Initiative and  
 11 Issues Safety, do you see that?  
 12 A. Yes, I do.  
 13 THE ARBITRATOR: This is page.  
 14 MR. CHESLER: 9451.  
 15 Q. This was a discussion of key EHS  
 16 initiatives and issues with respect to safety;  
 17 correct?  
 18 A. That's correct.  
 19 Q. Did they in fact present to you on  
 20 the point that they had an OSHA training series  
 21 as part of their EHS safety initiative?  
 22 A. Yes, they did.  
 23 Q. Did they tell you they also under  
 24 heading of EHS safety engaged in equipment  
 25 modification and replacement practices,

43 (Pages 842 to 845.)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 846

1 JOHN LEASE - DIRECT  
 2 including machine guarding?  
 3 A. Yes, they did.  
 4 Q. If you turn to page 9453, please it  
 5 looks like they went through EHS safety, then on  
 6 9452 EHS health. Then on 9453, EHS  
 7 environmental; is that what they did?  
 8 A. Yes.  
 9 Q. Under environmental on 9543 did  
 10 they present to you on the facts they had  
 11 pollution control programs and waste  
 12 minimization programs?  
 13 A. Yes, they did.  
 14 Q. Did they tell you they met with  
 15 local businesses on environmental issues in the  
 16 communities in which they operated?  
 17 A. Yes, they did.  
 18 Q. Did they tell you also they used  
 19 various systems including EnviroSoft to take  
 20 care of the documentation and reporting  
 21 responsibilities they had with respect to  
 22 environmental issues?  
 23 A. Yes.  
 24 Q. Did there come a time when you came  
 25 into possession of what are called scopes of

Page 847

1 JOHN LEASE - DIRECT  
 2 work for the Phase II investigations that Alcoa  
 3 was going to conduct after the closing?  
 4 A. Yes.  
 5 Q. Generally speaking, what are scopes  
 6 of work with respect to a Phase II  
 7 investigation?  
 8 A. In general scope of work describes  
 9 the actions that will be taken as part of the  
 10 investigation described, sampling locations, the  
 11 type of media to be sampled, for example, number  
 12 of samples to be taken and so forth.  
 13 Q. It says this is what we are going  
 14 to do, this is the scope of the work we are  
 15 going to perform when we go do our Phase II  
 16 investigation; is that a fair one sentence  
 17 summary?  
 18 A. Essentially, yes, that's correct.  
 19 Q. Did you provide those scopes of  
 20 work to Fairchild prior to any Phase II  
 21 investigations being done?  
 22 A. Yes, we did.  
 23 Q. Would you turn to tab 3, please.  
 24 Do you recognize this as an email that you sent  
 25 to Jeff Flanzenbaum of ERM and to John George on

Page 848

1 JOHN LEASE - DIRECT  
 2 October 16, 2002?  
 3 THE ARBITRATOR: Tab?  
 4 MR. CHESLER: Tab 3, your Honor.  
 5 A. Yes, I do.  
 6 Q. That is Exhibit Alcoa 34 for the  
 7 record.  
 8 A. Correct.  
 9 Q. It says in the first paragraph it  
 10 says "I gave copies of the Phase II SOW" that  
 11 stands for scopes of work?  
 12 A. Correct.  
 13 Q. "To Mike Hodge yesterday." Is that  
 14 consistent with your memory on or about October  
 15 15, 2002 you gave the Phase II scopes of work to  
 16 Mr. Hodge of Fairchild?  
 17 A. Yes.  
 18 Q. It says, "He took a brief look at  
 19 them and asked a few questions about how the  
 20 sampling plans were developed. He also  
 21 commented that for the California facilities the  
 22 plans seemed like 'overkill' to him. I'm not  
 23 surprised by this. At this point I think Mike's  
 24 primary role in this deal is to control costs  
 25 for remediation that could go back against

Page 849

1 JOHN LEASE - DIRECT  
 2 Fairchild post closing."  
 3 Was it your understanding at the  
 4 time that the Phase II studies that were going  
 5 to be done were studies that Alcoa was going to  
 6 seek reimbursement for under the agreement?  
 7 A. Yes, that was my understanding.  
 8 Q. Is that the context in which you  
 9 made the comments about Mr. Hodge appearing to  
 10 you to be primarily interested in controlling  
 11 the remediation costs that his firm would have  
 12 to pay for?  
 13 A. Yes.  
 14 Q. Did Mr. Hodge then or at any time  
 15 provide any substantive comments with respect to  
 16 the scopes of work that you provided?  
 17 A. Not that I'm aware of, no.  
 18 Q. You were the person to whom any  
 19 such comments were supposed to come at Alcoa;  
 20 weren't you?  
 21 A. Typically at this point I wasn't  
 22 the official representative, but for purposes of  
 23 communication before the deal in substance Mike  
 24 and I were counterparts.  
 25 Q. Did you have a meeting with Mr.

44 (Pages 846 to 849)

Page 850

1 JOHN LEASE - DIRECT  
 2 Hodge after you sent the scopes of work to him  
 3 on October 15, 2002?  
 4 A. Yes, we did.  
 5 Q. Do you recall that that meeting  
 6 took place on or about November 8th, 2002?  
 7 A. I believe that's the date, yes.  
 8 Q. At that time did Mr. Hodge provide  
 9 any substantive comments on the scopes of work  
 10 which he had for about three weeks at that  
 11 point?  
 12 A. No, he did not.  
 13 Q. Would you look at tab 4, please,  
 14 this is Alcoa Exhibit 35. Is this an email you  
 15 sent, is it Mr. Kluthe, is that the way it is  
 16 pronounced?  
 17 A. Kluthe.  
 18 Q. K-L-U-T-H-E. Is this an email you  
 19 sent to Mr. Kluthe on November 11, 2002?  
 20 A. Yes, it is.  
 21 Q. What was his position at the time?  
 22 A. Mr. Kluthe was in the corporate  
 23 development. Mr. Kluthe was a member of the  
 24 corporate developments group in Alcoa. His role  
 25 in the Fairchild deal was primarily to manage

Page 851

1 JOHN LEASE - DIRECT  
 2 the integration team that I referred to earlier  
 3 which was the multidiscipline team that was  
 4 working on transitioning Fairchild into Alcoa  
 5 post acquisition.  
 6 Q. I want you to take a moment and  
 7 look at the paragraph numbered 1 on Exhibit 35.  
 8 For the record it reads "We met with Mike Hodge,  
 9 Fairchild assistant counsel environmental on  
 10 Friday to review Phase II scopes of work for 14  
 11 Fairchild plants. Others in the meeting  
 12 included John George, Sandy Harvey and Jeff  
 13 Flanzenbaum. We briefly reviewed our approach  
 14 to the Phase II work at Fullerton and more  
 15 generally Alcoa's approach to remediation,  
 16 investigation and remedial action.  
 17 "Mike had very few comments and  
 18 noted that Fairchild would not object to our  
 19 plans for Phase II work, nor would they approve  
 20 them (Fairchild has no veto rights under the  
 21 agreement anyway) this meeting satisfied the  
 22 agreement requirement that we share relevant EHS  
 23 info with Fairchild and give them opportunity  
 24 for comment."  
 25 Is that what you believed was the

Page 852

1 JOHN LEASE - DIRECT  
 2 case at the time, sir?  
 3 A. Yes, it is.  
 4 THE ARBITRATOR: Let me ask you  
 5 the scopes of work preceded Phase II. These  
 6 were scopes of work that would be done in the  
 7 Phase II study?  
 8 THE WITNESS: That's correct.  
 9 THE ARBITRATOR: Thank you.  
 10 Q. He had them for about three weeks  
 11 before the meeting, you had the meeting, he gave  
 12 you no substantive comments at the meeting;  
 13 correct?  
 14 A. Correct.  
 15 Q. At any time after that meeting and  
 16 up to when the Phase II work was actually done  
 17 several months later, did he call or write or  
 18 communicate in any way and give you substantive  
 19 comments to the Phase II scopes of work?  
 20 A. No, he did not.  
 21 Q. Were the scopes of work for the  
 22 Phase II investigations revised in any way  
 23 subsequent to the original versions that you  
 24 provided to Mr. Hodge in October of 2002?  
 25 A. Yes. Some of them were revised.

Page 853

1 JOHN LEASE - DIRECT  
 2 Q. Generally speaking what was the  
 3 nature of the revisions?  
 4 A. Generally they would reflect  
 5 changes that were going to take place in the  
 6 field sampling. This was based on the fact that  
 7 the ERM personnel that were carrying out the  
 8 Phase II studies were able to go on to the sites  
 9 shortly after the acquisition and physically  
 10 locate where they were going to sample some  
 11 locations had to be moved, simply because there  
 12 may be a building in the way or some impediment.  
 13 They also redefined some of the  
 14 other aspects of the field work that was to take  
 15 place.  
 16 Q. So we're not talking about  
 17 revisions that said we're going to do Phase IIs  
 18 at entire other facilities we didn't originally  
 19 plan for, are we?  
 20 A. No. They were fairly minor changes  
 21 to what had already been presented in the  
 22 original scopes of work.  
 23 Q. Would you turn to tab 5, please.  
 24 MR. CHESLER: Your Honor, for the  
 25 record, we previously identified bulk Exhibit C

45 (Pages 850 to 853,

Page 854

1 JOHN LEASE - DIRECT  
 2 as in Charles which are all of the Phase II  
 3 documentation.  
 4 This appears in that bulk exhibit.  
 5 So we haven't marked it separately here.  
 6 Q. What is the document behind --  
 7 THE ARBITRATOR: This says Alcoa  
 8 Arbitration Exhibit C.  
 9 MR. SLIFKIN: We haven't done C  
 10 before.  
 11 MR. CHESLER: Let me apologize and  
 12 correct that, your Honor. My mistake. B were  
 13 the Phase II. My error. Exhibit C I will come  
 14 to, your Honor, a little later on in the  
 15 examination. It is a bulk exhibit of all of the  
 16 correspondence and reports Mr. Lease has  
 17 provided to Fairchild over time. This  
 18 particular document appears in that bulk exhibit  
 19 so we haven't given it a separate number. I  
 20 apologize.  
 21 Q. What is the document behind tab 5,  
 22 Mr. Lease?  
 23 A. This is a transmittal letter with  
 24 attachments whereby I provided Mike with the  
 25 revised scopes of work that we had just

Page 855

1 JOHN LEASE - DIRECT  
 2 discussed.  
 3 Q. Did you get any substantive  
 4 comments from Mr. Hodge in response to this  
 5 communication?  
 6 A. No.  
 7 Q. After the transaction closed in  
 8 December of 2002 did Alcoa conduct something  
 9 call the RIP or rapid integration process?  
 10 A. Yes.  
 11 THE ARBITRATOR: Rest in peace,  
 12 one or the other.  
 13 MR. CHESLER: One or the other.  
 14 Might be both.  
 15 Q. What is the rapid integration  
 16 process?  
 17 A. The rapid integration process or  
 18 RIP is a process whereby teams of Alcoa  
 19 individuals in different functional areas, such  
 20 as EHS, HR, finance.  
 21 Q. That is human resources?  
 22 A. Human resources.  
 23 Q. What else did you say, what was the  
 24 third one you mentioned?  
 25 A. Finance, I believe.

Page 856

1 JOHN LEASE - DIRECT  
 2 Q. Okay.  
 3 A. Will visit a new acquisition, a new  
 4 location in an acquisition. And the intent of  
 5 the site visit is to examine the facility's  
 6 programs in the functional area in this case.  
 7 In our area, EHS, we would send a team of EHS  
 8 professionals to a location. And the objective  
 9 of that team was during their site visit to  
 10 identify the EHS program elements that that  
 11 facility had in place. Identify and measure the  
 12 compliance status of that facility relative to  
 13 the applicable rules and regulations within that  
 14 jurisdiction.  
 15 Q. Are you familiar with a term called  
 16 gap analysis?  
 17 A. Yes, I am.  
 18 Q. What is a gap analysis in the  
 19 context of the rapid integration process?  
 20 A. A gap analysis is an assessment  
 21 that demonstrates or measures the facility  
 22 performance, in this case regulatory requirement  
 23 against the standard, against the regulator. In  
 24 other words, if a facility has an air permit as  
 25 an example the environmental representative on

Page 857

1 JOHN LEASE - DIRECT  
 2 that team would look at the requirements within  
 3 that air permit and determine if the facility  
 4 was in fact meeting all of the requirements for  
 5 that permit.  
 6 In places where they were not  
 7 meeting those requirements that would be  
 8 considered a gap.  
 9 Q. That is a gap in compliance?  
 10 A. A gap in compliance.  
 11 Q. Was this rapid integration process  
 12 and gap analysis done by Alcoa only for or  
 13 uniquely for the Fairchild acquisition or was  
 14 that a standard process the company followed  
 15 with respect to acquiring assets in companies  
 16 elsewhere?  
 17 A. This was a standard process we used  
 18 before this acquisition. And we have used since  
 19 this acquisition as a standard practice within  
 20 the company.  
 21 Q. Has Alcoa ever made a request for  
 22 indemnification to Fairchild for the costs  
 23 associated with the rapid integration process  
 24 and the gap analyses?  
 25 A. No.

46 (Pages 854 to 857)

MERRILL LEGAL SOLUTIONS  
 (800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 858

1 JOHN LEASE - DIRECT  
2 Q. Now, did the gap analyses done with  
3 respect to the Fairchild facilities identify any  
4 noncompliance EHS noncompliance gaps?

5 A. Yes, it did.

6 Q. Can you tell us in what areas or  
7 what types of areas if it is not an exhaustive  
8 list did you find noncompliance gaps?

9 A. Essentially we identified  
10 noncompliance gaps in just about every area  
11 within EHS. That included environmental  
12 compliance, air, water, waste water, solid and  
13 hazardous waste, management. As well as  
14 chemical substance reporting.

15 We identified gaps in health areas,  
16 including industrial hygiene, monitoring and  
17 exposures. We also identified gaps in workplace  
18 safety areas such as machine guarding, confined  
19 space, fall protection and so forth.

20 Q. Let me go back for one moment and  
21 make sure we have the right context here.

22 Prior to the gap analyses, prior to  
23 the Phase II studies, prior to the scopes of  
24 work for the Phase II studies, had Alcoa  
25 conducted Phase I studies with respect to the

Page 860

1 JOHN LEASE - DIRECT  
2 THE ARBITRATOR: What was the last  
3 one?

4 A. Torrance. And the intention --

5 Q. The intention?

6 A. The intention there was that the  
7 Phase Is assessments that we examined had  
8 indicated there were EHS compliance issues at  
9 these facilities, as well as remediation issues.  
10 And we felt they represented, by and large, the  
11 breath of all operations, manufacturing  
12 operations that existed within Fairchild at that  
13 time.

14 Q. To put it simply, was it your view  
15 the problems that you had found in the gap  
16 analyses at the four largest plants were going  
17 to be inclusive of whatever duplicative problems  
18 you found at the other smaller plants?

19 A. That was our sense based on site  
20 visits. And also based on the fact that further  
21 documentation on compliance issues was included  
22 in the Phase Is, which supported what we found  
23 in the gap analysis.

24 Q. They had the Phase Is by then, now  
25 you were sending them the gap analyses or

Page 859

1 JOHN LEASE - DIRECT  
2 Fairchild facilities?

3 A. Yes, we had.

4 Q. Had the Phase I studies been  
5 supplied to Fairchild prior to the closing of  
6 the transaction?

7 A. Yes, they had.

8 Q. Now, did you at some point send  
9 Fairchild any correspondence relating to the  
10 compliance gap analyses that you did.

11 A. Yes, I did.

12 Q. Did you send such analysis with  
13 respect to every one of the Fairchild facilities  
14 at that point?

15 A. No, I did not.

16 Q. As to how many of those did you  
17 send Fairchild gap analyses?

18 A. I believe there were four gap  
19 analyses reports that were sent.

20 Q. How were those chosen, what was the  
21 basis?

22 A. The initial RIP schedule targeted  
23 the four largest Fairchild facilities, at that  
24 time were St. Cosme in France, Toulouse, France,  
25 Fullerton, California and Torrance, California.

Page 861

1 JOHN LEASE - DIRECT  
2 summaries of the gap analyses for the four  
3 largest facilities you had just acquired;  
4 correct?

5 A. That's correct.

6 Q. Did you send the gap analyses to  
7 Fairchild before or after further work went on  
8 to address whatever the compliance gaps were you  
9 had found?

10 A. These were sent before the work was  
11 started to correct these deficiencies.

12 Q. Would you look at tab 6, please in  
13 the book?

14 MR. CHESLER: This, again, your  
15 Honor, is a document that appears in bulk  
16 Exhibit C. We just have not separately numbered  
17 it because it would just be extra documentation.

18 Q. What is the document behind tab 6  
19 which is bulk Exhibit C, page 2?

20 A. This document is the gap analysis  
21 report for St. Cosme.

22 Q. You sent this to Mr. Hodge?

23 THE ARBITRATOR: This is tab 6?

24 MR. CHESLER: Tab 6, yes, your  
25 Honor. It should be a letter on Alcoa

47 (Pages 858 to 861)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 862

1 JOHN LEASE - DIRECT  
 2 stationery addressed to Mr. Hodge.  
 3 THE ARBITRATOR: Yes.  
 4 Q. Is this in fact a gap analysis  
 5 summary you sent to Mr. Hodge on or about March  
 6 4, 2003?  
 7 A. Yes, it is.  
 8 Q. You tell him in the first sentence  
 9 you identified a number of existing regulatory  
 10 noncompliance issues that are summarized in the  
 11 attached table; correct?  
 12 A. Correct.  
 13 Q. If we nip over to the back of that  
 14 page bulk Exhibit C, page 3, you identify six  
 15 different areas of noncompliance; is that right?  
 16 A. That's correct.  
 17 Q. The first is waste water. Second  
 18 air emission. Third, hazardous materials.  
 19 Fourth is fall control requirements. Fifth,  
 20 machine guarding. And six, noise reduction.  
 21 Correct?  
 22 A. Correct.  
 23 Q. What was the intention of the  
 24 regulatory citation column on that chart, the  
 25 second column?

Page 863

1 JOHN LEASE - DIRECT  
 2 A. The agreement we had signed with  
 3 Fairchild for the acquisition included a  
 4 provision to recoup costs for corrective actions  
 5 to address noncompliance issues that existed at  
 6 the time of the acquisition.  
 7 So when we looked at these areas of  
 8 compliance within the facility, we intended and  
 9 actually were diligent in identifying the  
 10 specific regulatory requirement that applied to  
 11 the specific operation.  
 12 In this case it included  
 13 environmental areas as well as safety areas and  
 14 health areas.  
 15 Q. So these were not Alcoa  
 16 requirements, these were governmental  
 17 requirements of various types?  
 18 A. That's correct.  
 19 Q. Then under corrective actions, what  
 20 was the intent of that column in the gap  
 21 analysis summary?  
 22 A. This corrective action summary  
 23 really was our plan going forward to address the  
 24 noncompliance issue we had identified.  
 25 Q. By and large were these different

Page 864

1 JOHN LEASE - DIRECT  
 2 problems at these different facilities and  
 3 potential corrective actions also the subject of  
 4 comment in the Phase I reports?  
 5 A. Yes, they were.  
 6 Q. What was the intent of estimated  
 7 cost column in these summaries?  
 8 A. These estimated costs were our  
 9 estimate at that time of what it would take to  
 10 bring or implement the corrective action that  
 11 was identified in the corrective action column.  
 12 Q. Were these final estimates,  
 13 preliminary estimates, what were they?  
 14 A. I would consider these to be  
 15 preliminary estimates.  
 16 Q. Did some of them change thereafter?  
 17 A. I can't recall specifically, but it  
 18 is possible, yes.  
 19 Q. Did you get a response from  
 20 Fairchild to this gap analysis summary that you  
 21 sent with respect to the St. Cosme facility?  
 22 A. Yes, I did.  
 23 Q. Would you look at tab 7, please, in  
 24 the book. Is this the response you received to  
 25 that letter?

Page 865

1 JOHN LEASE - DIRECT  
 2 A. Yes, it is.  
 3 Q. I note this one came from Mr.  
 4 Miller. You sent yours to Mr. Hodge, but Mr.  
 5 Miller responded?  
 6 A. Yes, that's correct.  
 7 Q. Mr. Miller says that "Based upon  
 8 our previous understanding of the environmental  
 9 issues at the St. Cosme facility" this is the  
 10 facility that was until December 2003 owned by  
 11 Fairchild; correct?  
 12 A. December of 2002.  
 13 Q. Excuse me, December 2002; correct?  
 14 A. Correct.  
 15 Q. So based upon his previous  
 16 understanding of the environmental issues at  
 17 that facility, it says "It leads us to question"  
 18 then he goes on to talk about whether all of the  
 19 items listed in the table fall within the ambit  
 20 of 11.6 of the agreement and whether the  
 21 estimated costs are justified.  
 22 He goes on to say they want  
 23 specific and complete background documentation,  
 24 costs, etc.  
 25 Did you understand this letter to

48 (Pages 862 to 865)

MERRILL LEGAL SOLUTIONS  
 (800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 866

1 JOHN LEASE - DIRECT  
2 tell you that the items in your March 4th letter  
3 relating to fall control, machine guarding and  
4 noise reduction were not covered in any way,  
5 shape or form by the indemnification?

6 A. That was my general impression of  
7 this letter, yes.

8 Q. He was telling you he wasn't going  
9 to pay?

10 A. Essentially he was questioning,  
11 yes, he is questioning whether these are  
12 eligible for payment under the agreement.

13 Q. Did you respond to Mr. Miller's  
14 letter of March 14?

15 A. Yes, I did.

16 Q. We will get to your response soon.  
17 Let me ask you a couple of other questions  
18 first.

19 With respect to St. Cosme and Mr.  
20 Miller in particular saying he was basing his  
21 position, in part at least on Fairchild's  
22 previous understanding of the environmental  
23 issues at the St. Cosme facility, did you in the  
24 first months of 2003 get to acquire any  
25 information now that Alcoa owned these

Page 867

1 JOHN LEASE - DIRECT  
2 facilities about what in fact had been going on  
3 at St. Cosme with respect to environmental  
4 issues during the period of time in which  
5 Fairchild owned it?

6 A. Yes, we did.

7 Q. Particularly with respect to waste  
8 water treatment at the St. Cosme facility, what  
9 did you learn in the first months of 2003 had  
10 been going on there during Fairchild's ownership  
11 of the facility?

12 A. We learned that they had ongoing  
13 noncompliance with their waste water discharges  
14 to the community sewer. And that they had  
15 proposed the construction and installation of a  
16 new waste water treatment facility to address  
17 those issues.

18 Q. Did you learn anything else with  
19 respect to the way in which the St. Cosme  
20 facility had reported information about waste  
21 water to the authorities in France?

22 A. Yes, we did.

23 Q. What did you learn?

24 A. Well, I was a member of this  
25 integration team. So I visited the site with

Page 868

1 JOHN LEASE - DIRECT  
2 the team. My specific area of responsibility  
3 was water and waste water compliance.

4 In the process of examining their  
5 waste water program for compliance matters, I  
6 learned from the environmental manager who was  
7 also the plating line superintendent at the  
8 facility, that she had been instructed when  
9 reporting the discharge results to the local  
10 authorities to essentially lie about the levels  
11 that were in the waste water, contaminants in  
12 the waste water whenever the levels exceeded  
13 their permit limit.

14 Q. Would you look at tab 8 in the  
15 book, please. For the record this is Alcoa  
16 Exhibit 41.

17 Do you recognize this as an email  
18 from Catherine Tabary?

19 A. Yes.

20 Q. Who is she?

21 A. Catherine was the environmental  
22 manager and plating line superintendent at St.  
23 Cosme at that time.

24 Q. She says in this note, "Please find  
25 enclosed the water analysis from our waste water

Page 869

1 JOHN LEASE - DIRECT  
2 treatment plant that were sent to authorities  
3 from 1999 until now. I will compile actual  
4 results as soon as possible."

5 Did you understand that from your  
6 conversations with her that the actual waste  
7 water results differed from the results reported  
8 to the authorities for a period of three or four  
9 years?

10 A. That was my understanding, yes.

11 Q. We heard some testimony earlier  
12 today about when Fairchild actually bought  
13 certain facilities. Was it your understanding  
14 Fairchild owned the St. Cosme facility in 1999  
15 when this misreporting commenced?

16 A. That was my understanding, yes.

17 Q. Did Ms. Tabary subsequently give  
18 you the actual waste water discharge data for  
19 the St. Cosme facility?

20 A. Yes, she did.

21 Q. Would you turn to tab 9, please.  
22 By the way was there an attachment to the  
23 original email, was there data in fact attached,  
24 the data she refers to as having been sent to  
25 the authorities from 1999 on?

49 (Pages 866 to 869.)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 870

JOHN LEASE - DIRECT

A. Yes, a series of spreadsheets, data summaries that were attached to the email.

MR. CHESLER: They follow, your Honor, in the exhibit, the pages thereafter.

THE ARBITRATOR: Yes.

Q. Tab 9, Exhibit 42, do you recognize this as a subsequent email from Ms. Tabary in which she says she is enclosing the actual values regarding water discharge, many from the waste water treatment plant for the last two years at St. Cosme?

A. Yes.

Q. If you look down toward the bottom of that same page you see a note from Catherine Tabary to Richard Tomicek; correct?

A. Tomicek.

Q. Is he also an Alcoa employee?

A. Yes, he is.

Q. At that point he was Alcoa. She says in the second paragraph of her note at the bottom of the first page of Exhibit 42, "Concerning water analysis, the spreadsheets I sent you last Friday are the ones we sent to authorities. The limits that we should comply

Page 871

JOHN LEASE - DIRECT

to are placed in the line called norm. You should not find a lot of noncompliance in these spreadsheets except in the last months. The spreadsheets with the actual values for the last two years are under preparation. I will try to send them before the call."

Then she in fact subsequently sent them; correct?

A. Correct.

Q. Did the actual data for waste water discharge at St. Cosme differ from what St. Cosme had reported while it was a Fairchild facility?

A. Yes, it did.

Q. Without going through the specific numbers, can you generally describe for the judge what kind of discrepancies or differences there were between the actual data and reported data?

A. Well, the Fairchild facility at St. Cosme reported and was subject to limits for flow, what waste water flow, various contaminants such as metals, suspended solids in the water, oil and grease. Limits were

Page 872

JOHN LEASE - DIRECT

established for all those parameters in the discharge. And generally the levels that were reported to the local agency were below the actual levels that were recorded in the samples.

Q. Did you or did Alcoa ask the consultants at ERM to analyze the different data, the books that were given to the authorities versus the actual data?

A. Yes, we did.

Q. Would you turn to tab 10, please.

THE ARBITRATOR: Is that okay in trance to keep two sets of books?

THE WITNESS: No, sir.

MR. CHESLER: Some things seem to be universal truths, your Honor.

THE ARBITRATOR: Even in France they don't allow it.

MR. CHESLER: Even in France and even though they like Jerry Lewis.

Q. Would you look at Exhibit 43 which is behind tab 10, please. Do you recognize this as ERM analysis of the two sets of books at St. Cosme?

A. Yes, I do.

Page 873

JOHN LEASE - DIRECT

Q. I notice if you look in the first page of Exhibit 43, about a third of the way down there is a bold heading that says Flow. Do you see that?

A. Yes, I do.

Q. Then it says "The waste water flow is, by far the parameter which is the most frequently out of compliance with the limit value set in the permit. From January 1, 2002, 27 percent of the real flow values are in exceedance of the permit value."

THE ARBITRATOR: That is a volume number, the flow that is what they are talking about volume of liquid?

THE WITNESS: Yes, it is measured as cubic meters per hour, I believe. Cubic meters per day.

Q. Then if you go down that same section to about six or eight lines above the bold heading PH at the bottom, if you go six lines above that heading you see there is a text that says "To show compliant values, the site has undervalued 70 data, and has reported to the authorities 142 flow data which were not

50 (Pages 870 to 873)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 874

1 JOHN LEASE - DIRECT  
 2 included in the real value tables."  
 3 Then they give the average real  
 4 flow values from the beginning of 2000 and the  
 5 average sent value, meaning what was sent to the  
 6 authorities; correct?  
 7 A. Correct.  
 8 Q. So you had or Alcoa had ERM analyze  
 9 the discrepancies in the two sets of books; is  
 10 that right?  
 11 A. That's correct.  
 12 Q. This is the report about that --  
 13 A. Exactly.  
 14 Q. -- to you. Would you look on  
 15 page 58542, which is the third page of this ERM  
 16 report. The third section of that page up from  
 17 the bottom, third from the bottom is entitled  
 18 Water Consumption of the Surface Treatment  
 19 Facilities. Do you see that?  
 20 A. Yes, I do.  
 21 Q. They reported there, ERM reported  
 22 the site exceeds for 12 surface treatment lines  
 23 out of 19 the limit value set in the order of  
 24 September 26, 1985.  
 25 That was that a permit in effect,

Page 875

1 JOHN LEASE - DIRECT  
 2 under which they were operating?  
 3 A. Yes, it is.  
 4 Q. It says for 12 of the 19 surface  
 5 treatment lines they were in excess of the  
 6 limits permitted by the permit?  
 7 A. That's correct.  
 8 Q. It says "A water recycling study  
 9 was carried out in 2002." Now 2002 was when  
 10 Fairchild owned the place; right?  
 11 A. That's correct.  
 12 Q. So ERM is telling you that while  
 13 Fairchild owned it there was a water recycling  
 14 study done which showed that approximately, I  
 15 think that is a typo 400,000 Euros should be  
 16 spent in treatment equipment for allowing the  
 17 recycling of water; correct?  
 18 A. Correct.  
 19 Q. "We estimate" ERM estimates "This  
 20 figure should be at least double 800,000 to 1  
 21 million Euros if you include the works to  
 22 install the modified lines." Is that right?  
 23 A. That's correct.  
 24 Q. Is that something that was  
 25 disclosed to you, to Alcoa by Fairchild so far

Page 876

1 JOHN LEASE - DIRECT  
 2 as you know prior to this investigative work  
 3 Alcoa did?  
 4 A. Not that I'm aware of, no.  
 5 Q. It wasn't until Alcoa hired ERM in  
 6 the face of finding two separate sets of books  
 7 at St. Cosme that you learned that Fairchild had  
 8 itself had a study done before the sale in which  
 9 they were told it would cost something on the  
 10 order of 400,000 Euros they needed to replace  
 11 this water recycling facility; correct?  
 12 A. That's my understanding, yes.  
 13 Q. I want you to look at tab 11?  
 14 MR. CHESLER: Your Honor, behind  
 15 tab 11, which is Exhibit 44, the first three  
 16 pages are of course in French. Immediately  
 17 following that is an English translation of the  
 18 French document, beginning the fourth page  
 19 behind the tab. The last page is a  
 20 certification from our translators here at  
 21 Cravath that this is accurate French to English  
 22 translation.  
 23 MR. ZUROFSKY: We will reserve our  
 24 right to review the translation and see if we  
 25 disagree with it. I don't have at this point a

Page 877

1 JOHN LEASE - DIRECT  
 2 basis to object.  
 3 MR. CHESLER: Fine.  
 4 Q. Would you turn, Mr. Lease, to the  
 5 first page of the English translation which is  
 6 the fourth page I believe behind tab 11.  
 7 A. Okay.  
 8 Q. Do you recognize this as a proposal  
 9 made to Fairchild back in March of 2001 for  
 10 water treatment facility at the St. Cosme  
 11 location?  
 12 A. Yes, I do.  
 13 Q. If you look on page that end 859,  
 14 you see there is a heading Roman III Indicative  
 15 Budget. Do you see that?  
 16 A. Yes.  
 17 Q. Is it the case this study done by  
 18 Fairchild back in 2001 indicated the budget  
 19 estimate they received for doing this work was  
 20 something close to 900,000 Euros?  
 21 A. That's correct.  
 22 Q. If you turn to the next page, the  
 23 page that ends 11860, the last page of the  
 24 English translation. Under the heading Comments  
 25 Regarding the Project?

51 (Pages 874 to 877)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 878

JOHN LEASE - DIRECT

A. I see that, yes.

Q. Fairchild was told these

consultants suggested, based on the study of pollution flows that they plan to have an engineering study performed in which they could elaborate on the following points. The first of which is waste water treatment based on the data that was done, derived from the study; correct?

A. That's right.

Q. When you took over the facilities did you find that Fairchild had in fact taken this recommendation and done the study that was suggested?

A. I don't believe they had at this point, no.

Q. So this was being suggested in early '01. You didn't take over the facility until the end of '02; correct?

A. That's correct.

Q. Despite all of that and apparently according to him, based upon Fairchild's prior knowledge of the environmental issues at this facility, that is what Mr. Miller said, he wanted more information from you before he would

Page 879

JOHN LEASE - DIRECT

tell you one way or the other if he was going to pay you for the work, investigative work you were doing at St. Cosme, do you recall that?

A. Yes, I do.

Q. You indicated earlier you responded to that request for more information. Would you look at tab 12, please. Is this your response to Mr. Miller's request for more information on the ground he supposedly based upon their knowledge of St. Cosme, needed this information?

A. Sorry, could you repeat that.

Q. Yes. Is this your response to Mr. Miller's request for more information which he said he needed based upon his review of what you sent him and their own prior knowledge of what had gone on in St. Cosme?

A. Yes, it is.

Q. Attached to this letter on the back of the letter, did you in fact provide further detail on each of the six areas of noncompliance you had identified in your first gap summary?

A. Yes, I did.

Q. Let's look at that page. This is the page that ends 005, your Honor. It is the

Page 880

JOHN LEASE - DIRECT

backside of the document behind tab 12. Which, for the record is bulk Exhibit C, page 20. That is the backside is page 20.

Do you have that, Mr. Lease?

THE ARBITRATOR: Bulk Exhibit C volume 1 of 22.

MR. CHESLER: Yes, there is a lot of correspondence and reports, your Honor, many, many volumes. Maybe they are here. The entire, just for your Honor, just for your reference the entire two bottom two shelves of the bookcase in front of you are the correspondence and reports sent by Mr. Lease.

THE ARBITRATOR: You will bring those up to my office?

MR. CHESLER: One page at a time. We have all the paralegals waiting outside.

A. Yes.

Q. The first item of the six that are listed here again is waste water; correct?

A. That's correct.

Q. That is the area in which they were keeping two sets of books; correct?

A. Correct.

Page 881

JOHN LEASE - DIRECT

Q. You say under Issues and Regulatory Background in this additional detail that Mr. Miller asked for, "The facility waste water discharge is routinely noncompliant with the numerical limitations for several parameters, flow" you give others, "In its operating permit which was issued in 1986." Correct?

A. Correct.

Q. That is the information you learned from hiring consultants who analyzed the two sets of books that Fairchild kept; isn't it?

A. I think timing-wise I have to look at the date on this versus the date on the ERM report. But the ERM study was in progress at the time this reply was sent.

So we were aware at that point that there were two sets of books through discussions with Catherine. That is reflected in this statement.

Q. Fine. So you sent this letter, did you get a response from Fairchild to this additional information they requested?

A. I believe I did. Yes.

THE ARBITRATOR: What on this

52 (Pages 878 to 881)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 882

1 JOHN LEASE - DIRECT  
 2 chart we were just looking at is additional?  
 3 Much of it looks to be the same as the last one  
 4 we saw. You added a column, what column.  
 5 THE WITNESS: I believe the  
 6 middle column, your Honor.  
 7 THE ARBITRATOR: That wasn't in  
 8 the last one?  
 9 MR. CHESLER: We can go back and  
 10 look. Let's see. Yes, if you look your Honor,  
 11 behind tab 6, the original report behind tab 6  
 12 had four columns, issue description, regulatory  
 13 citation, corrective actions and estimate of  
 14 cost. Now there has been added issue and  
 15 regulatory background column. Which I just read  
 16 from in the waste water entry. There is one for  
 17 each of the entries.  
 18 Q. Would you look at tab 13, Mr.  
 19 Lease.  
 20 A. Yes.  
 21 Q. Is this Mr. Miller's response to  
 22 the additional information you provided in  
 23 response to his earlier request with respect to  
 24 St. Cosme?  
 25 A. Yes, it is.

Page 883

1 JOHN LEASE - DIRECT  
 2 Q. He tells you toward the end of the  
 3 first paragraph, that the further background  
 4 detail you provide is really no more conclusory  
 5 statements as to your rationale for including  
 6 these issues and he asked whether you performed  
 7 more assessments. And says "I want still more  
 8 documentation." Correct?  
 9 A. Correct.  
 10 Q. What did you do with respect to  
 11 this letter?  
 12 A. At this point Mr. Miller had  
 13 everything we had. Much of the information that  
 14 he was asking for was in fact in Fairchild's  
 15 possession at the time of the sale and we really  
 16 had nothing further to give him to describe the  
 17 issues that he requested us to respond to.  
 18 Q. By the way, was St. Cosme the only  
 19 Fairchild facility at which you found that the  
 20 Fairchild folks had been misrepresenting the  
 21 environmental information to the regulators?  
 22 A. No. It was not.  
 23 Q. Where else did you find such  
 24 information?  
 25 A. When we visited the Torrance

Page 884

1 JOHN LEASE - DIRECT  
 2 facility to conduct the rapid integration site  
 3 visit, I was also a member of that team assigned  
 4 to waste water again.  
 5 During my discussions with the  
 6 personnel on the site that treated the waste  
 7 water and waste water treatment plant, I was  
 8 told by the chief treatment plant operator  
 9 during periods when the Los Angeles County  
 10 Sanitation District was on site sampling the  
 11 waste water for compliance with their limits, it  
 12 was a routine practice to turn on the rinse  
 13 water flow in the plating line operation to, in  
 14 essence, dilute the discharge with clean water  
 15 thereby lowering the concentration of  
 16 contaminants which allowed them to meet their  
 17 permit limits.  
 18 Q. With respect to the St. Cosme and  
 19 Torrance situations where you found this  
 20 evidence of misrepresentation, what was Alcoa's  
 21 instruction to the plant personnel going forward  
 22 now that Alcoa owned those facilities?  
 23 A. They were told to immediately cease  
 24 the practices they were undertaking at the time  
 25 that Fairchild owned them.

Page 885

1 JOHN LEASE - DIRECT  
 2 Q. What was the response you got from  
 3 the folks in the plant sites?  
 4 A. They were happy to oblige. The  
 5 practices that were occurring at Torrance, for  
 6 example, would be considered criminal offenses  
 7 under the Clean Water Act.  
 8 Q. You mentioned earlier you provided  
 9 gap analysis summaries for the four largest  
 10 plants, which you thought had comprehensive list  
 11 of the problems you were finding. Did you have  
 12 any better success getting an agreement from  
 13 Fairchild that they would indemnify expenses  
 14 with respect to the other plants for which you  
 15 gave gap analyses than you did respect to St.  
 16 Cosme?  
 17 A. No.  
 18 Q. Did you get pretty much the same  
 19 response?  
 20 A. Very much the same response.  
 21 Q. Let's look at tab 14, please. This  
 22 is again from bulk Exhibit C. This happens to  
 23 be a document that begins at page 35 of bulk  
 24 Exhibit C. Tab 14, your Honor.  
 25 Is this your gap summary for the

53 (Pages 882 to 885,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 886

1 JOHN LEASE - DIRECT  
 2 Fullerton facility?  
 3 A. Yes.  
 4 Q. Just skip ahead a minute, would you  
 5 go to tab 16 which is Exhibit C, beginning at  
 6 page 32. Is this your gap summary for the  
 7 Toulouse facility?  
 8 A. Yes, it is.  
 9 Q. Did you get responses from  
 10 Fairchild with respect to Fullerton and  
 11 Toulouse?  
 12 A. Yes, I did.  
 13 Q. Why don't you look at tab 15, which  
 14 is Alcoa Exhibit 47. Do you have that?  
 15 A. Yes, I do.  
 16 Q. Is this Mr. Miller's response on  
 17 behalf of Fairchild to your gap summary for the  
 18 Fullerton facility?  
 19 A. Yes, it is.  
 20 Q. Just to take a moment if we can,  
 21 sorry to make you flip back and forth so much, I  
 22 am trying to save us a little time, behind tab  
 23 14, that is the Fullerton gap summary. Among  
 24 the areas that you reported the issues on which  
 25 you reported noncompliance were lock out tag

Page 887

1 JOHN LEASE - DIRECT  
 2 out; is that right?  
 3 A. That's right.  
 4 Q. That is a question of whether the  
 5 power supply to the machine is locked so people  
 6 don't get hurt during maintenance procedures?  
 7 A. That's correct.  
 8 Q. You gave them information about  
 9 noncompliance for confined space entry; is that  
 10 right?  
 11 A. Right.  
 12 Q. Would you describe very quickly for  
 13 the judge what confined space entry deals with?  
 14 A. Confined space entry procedures  
 15 define the practices that employees such as  
 16 maintenance personnel will use in the workplace  
 17 when they enter a piece of equipment such as a  
 18 tank or some kind of chamber that typically  
 19 would not support life, human life. And to  
 20 protect the employee, confined space procedures  
 21 define various actions the employee must take to  
 22 test the atmosphere inside that confined space,  
 23 provides for a stand by person to remain outside  
 24 should any problems develop while the person is  
 25 in the confined space.

Page 888

1 JOHN LEASE - DIRECT  
 2 And also procedures to follow to  
 3 notify others in the area that there is a person  
 4 inside of a confined space.  
 5 Q. You also identified in this gap  
 6 summary machine guarding as another area on the  
 7 top of page 38; right?  
 8 A. That's correct.  
 9 Q. That is putting up guards to make  
 10 sure people don't lose hands and toes, that sort  
 11 of problem?  
 12 A. Yes.  
 13 Q. Then you have fall control. What  
 14 are the OSHA fall control issues relate to?  
 15 A. Fall control is a program that  
 16 again provides protective measures for employees  
 17 that work at various heights.  
 18 THE ARBITRATOR: Whereabouts are  
 19 you on this exhibit, 14?  
 20 MR. CHESLER: Yes, your Honor  
 21 Exhibit 14, the page up at the top right-hand  
 22 corner is numbered 38.  
 23 THE ARBITRATOR: Right.  
 24 MR. CHESLER: The second box in  
 25 the middle of the page is the location under

Page 889

1 JOHN LEASE - DIRECT  
 2 issue description.  
 3 THE ARBITRATOR: Tab 38 did you  
 4 say.  
 5 MR. CHESLER: Page 38 in the upper  
 6 right-hand corner of the page.  
 7 THE ARBITRATOR: I'm looking at  
 8 the number on the bottom.  
 9 MR. CHESLER: The number in the  
 10 bottom is old Bates numbers, when we put them in  
 11 bulk volumes we numbered them sequentially at  
 12 the top.  
 13 Q. You have a fall control section.  
 14 You were explaining what fall control relates  
 15 to?  
 16 A. Yes. Fall control is a program  
 17 area in work place health and safety that deals  
 18 with protecting employees when they work at  
 19 various heights above the floor, on platforms,  
 20 or on a roof, for example, to ensure that, in  
 21 essence they don't fall off.  
 22 Q. Putting up railing and the like?  
 23 A. Yes, that's correct.  
 24 Q. Let me pick out one other one. The  
 25 last category, I guess not the last category,

54 (Pages 886 to 889)

Page 890

JOHN LEASE - DIRECT

the next category on the next page, page 39 is is mobile equipment practices and conditions. Does that have to do with safety measures for equipment that moves around like cranes and things of that sort?

A. Cranes and fork trucks, industrial vehicles in the workplace, yes.

Q. You gave Mr. Miller all these sections and cites to OSHA regulations and the like. And he responded with the letter behind tab 15; correct?

A. That's correct.

Q. It says in the subject line of the letter, Exhibit 47 behind tab 15, it says "Re: Fullerton." So he is responding with respect to Fullerton; correct?

A. That's correct.

Q. Did you find anything odd when you read this letter given he was responding to you concerning the Fullerton facility and his letter begins that this is Re: Fullerton?

A. Sorry, could you repeat that.

Q. Yes. Did you find anything odd about the content of this letter considering

Page 892

JOHN LEASE - DIRECT

A. This letter says exactly the same thing that the Fullerton letter said, referencing a notice of violation at Torrance.

Q. So what did you conclude from writing letters about different facilities and you keep getting the same letter back about Torrance?

A. This appears to be a form letter, to me.

Q. This form letter in addition to telling you they were complaining about something in Torrance says "Nevertheless pursuant to section 11.7 of the agreement we are willing to discuss this matter further" it goes on.

Did you have an understanding of what 11.7 was?

A. I think 11.7 referred to dispute resolution.

Q. We heard some testimony earlier well it refers to dispute resolution, but it says we are willing to discuss it further with you.

Did you have any understanding in

Page 891

JOHN LEASE - DIRECT

that he was supposedly responding to you with respect to the Fullerton facility? In particular would you look down toward the bottom of the second paragraph of the letter what facility is referred to in the text of the letter.

A. I see what you're saying. The content of the letter was to deal with Fullerton. His comments regarding the only notice of violation that had been received actually related to the Torrance facility, which wasn't the subject of this particular gap analysis.

Q. In fact why don't you flip to tab 17. This is Alcoa Exhibit 49. Tab 17.

This is Mr. Miller's response to you, to your gap analysis summary for the Toulouse facility, right that was one of the four major facilities?

A. That's correct.

Q. You wrote to him about Fullerton. He writes back telling you about a problem in Torrance. Then you write to him about Toulouse and he writes back and what does this letter say?

Page 893

JOHN LEASE - DIRECT

order to continue discussing things between the two companies Fairchild had to invoke the procedures of section 11.7?

A. I am not an attorney. So I wasn't fully sure of what this particular statement meant in terms of future discussions with Fairchild.

Q. You had correspondence back and forth with them before that didn't involve anybody citing to the dispute resolution procedures; hadn't you?

A. That's correct.

Q. If they called you up and said, John, we want to talk to you about what you've told us about Toulouse, would you have spoken to them?

A. Yes, I would.

Q. Did they ever call you?

A. No.

Q. Did they ever ask to have a visit?

A. No.

Q. Did they ever ask to send consultants to look at any of their former sites?

55 (Pages 890 to 893)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 894

1 JOHN LEASE - DIRECT  
 2 A. No.  
 3 Q. Did they ever ask to talk to your  
 4 consultants?  
 5 A. No.  
 6 Q. Would you have said to them I won't  
 7 talk to you, I won't communicate with you unless  
 8 we do it under the dispute resolution procedures  
 9 of the contract?  
 10 A. No.  
 11 Q. So you send them these gap analyses  
 12 and they send you these form letters telling you  
 13 about Torrance and citing to 11.7.  
 14 In this 2003, the same time period,  
 15 the Phase II studies are going forward; aren't  
 16 they?  
 17 A. Yes, they are.  
 18 Q. The studies you had given them  
 19 scopes of work for back in 2002, then gave them  
 20 revised scopes of work for in early '03;  
 21 correct?  
 22 A. Correct.  
 23 Q. As to which you never got any  
 24 comments; right?  
 25 A. That's correct.

Page 895

1 JOHN LEASE - DIRECT  
 2 Q. Did you give them the Phase II  
 3 reports?  
 4 A. Yes, we did.  
 5 Q. Did you get any responses with  
 6 respect to any Phase II reports?  
 7 A. Yes, I did.  
 8 Q. Would you look at tab 18, please.  
 9 This is Alcoa Exhibit 32.  
 10 A. Okay.  
 11 Q. Do you recognize this as a letter  
 12 you received from Ernesto Beckford at Fairchild  
 13 with respect to the Phase II assessment costs  
 14 for 14 of the former Fairchild facilities?  
 15 A. Yes.  
 16 Q. In fact you had only done Phase IIs  
 17 at 14 facilities; right?  
 18 A. That's correct.  
 19 Q. So Mr. Beckford basically divides  
 20 up all of the invoice information you gave him  
 21 into three categories; is that right?  
 22 A. That's correct.  
 23 Q. Look at the first category on  
 24 page 293, your Honor. It is the backside of the  
 25 first page of Exhibit 32.

Page 896

1 JOHN LEASE - DIRECT  
 2 This says "No Fasteners  
 3 Environmental Conditions." Did you agree with  
 4 the Fairchild position that if you did  
 5 investigation work at a facility and had not  
 6 identified up to that point some environmental  
 7 condition like a contamination situation, that  
 8 they had no obligation to pay you for the study?  
 9 A. That was not my understanding, no.  
 10 Q. Second category says well these are  
 11 environmental conditions which were already  
 12 disclosed by Fairchild and were already being  
 13 remediated, that is what his letter says; right?  
 14 A. Yes.  
 15 Q. Did you have an understanding if  
 16 you expended money with respect to a condition  
 17 they did tell you about as opposed to the ones  
 18 they didn't tell you about, that they had no  
 19 obligation to pay you for your own investigative  
 20 expenses with respect to those conditions?  
 21 A. No.  
 22 Q. The third category says, here are  
 23 mixed reports disclosing no action required and  
 24 disclosing potential Fasteners Environmental  
 25 Conditions. You see he says there "The Phase II

Page 897

1 JOHN LEASE - DIRECT  
 2 assessments for the following facilities" now on  
 3 page 295, your Honor. "Identified some  
 4 Fasteners Environmental Conditions."  
 5 THE ARBITRATOR: Slow up a little  
 6 bit. Let me just look at this.  
 7 MR. CHESLER: Yes, sir.  
 8 THE ARBITRATOR: I take it in his  
 9 letter bottom of the first paragraph the number  
 10 he cites should be 940,000?  
 11 MR. CHESLER: Yes, your Honor, I  
 12 believe.  
 13 THE ARBITRATOR: A zero at the end  
 14 there.  
 15 MR. CHESLER: Yes, I think so.  
 16 Can we proceed, your Honor?  
 17 THE ARBITRATOR: Yes.  
 18 Q. Mr. Lease, I would like you to look  
 19 at the third of Mr. Beckford's three categories  
 20 into which he grouped the invoices you sent him  
 21 that would be on page 295 of Exhibit 32 which is  
 22 behind tab 17 in the book. Do you have that?  
 23 A. Okay.  
 24 Q. As to these, this third category,  
 25 Mr. Beckford told you that you had identified

56 (Pages 894 to 897)

Page 898

1 JOHN LEASE - DIRECT  
 2 some Fasteners conditions which may require  
 3 further action under applicable environmental  
 4 laws, including applicable remediation  
 5 standards; correct?  
 6 A. Correct.  
 7 Q. But he said, you've also  
 8 investigated some things in which we don't think  
 9 you found any Fasteners condition, Fasteners  
 10 environmental condition, we want you to break  
 11 those up; right?  
 12 A. That's right.  
 13 Q. What did you do in response to  
 14 that?  
 15 A. We did not response to this letter  
 16 with further data, broke up the cost data.  
 17 Q. Why is that?  
 18 A. Our understanding was that based on  
 19 the Phase I assessments which identified the  
 20 areas of potential contamination, on which we  
 21 base the Phase II scopes of work, and revised  
 22 scopes of work on which were based these Phase  
 23 II reports, the full cost of the investigation  
 24 was covered as part of the agreement. And was  
 25 not subject to what we found.

Page 899

1 JOHN LEASE - DIRECT  
 2 Q. By the way, were you later informed  
 3 by Fairchild that they had changed their  
 4 position in any way about the possibility of  
 5 paying for at least some of the items in this  
 6 category 3?  
 7 A. Yes, I believe at some point in a  
 8 subsequent letter we were advised by Susan Hall  
 9 they were withdrawing this potential  
 10 reimbursement for portions of the Phase II site  
 11 investigations.  
 12 Q. Would you look at tab 19, please.  
 13 Do you recognize this as a letter you received  
 14 from Ms. Hall on or about February 25 of 2005?  
 15 A. Yes.  
 16 Q. Would you turn to the second page  
 17 of the document, this is Exhibit 103. There is  
 18 a footnote at the bottom of that page. It says  
 19 "On a related matter?"  
 20 THE ARBITRATOR: This is page 342?  
 21 MR. CHESLER: 340, your Honor. Is  
 22 yours double-sided?  
 23 THE ARBITRATOR: Yes.  
 24 Q. Bottom of page 340, Mr. Hall's  
 25 letter has a footnote that says "On a related

Page 900

1 JOHN LEASE - DIRECT  
 2 matter, by letter dated February 26, 2004, we  
 3 requested additional information regarding  
 4 approximately \$528,000 of Phase II assessment  
 5 costs incurred by Alcoa."  
 6 That is referring to that category  
 7 3 from your Phase II notice letter; correct?  
 8 A. Correct.  
 9 Q. She says "On further analysis, we  
 10 have determined that for the same reasons  
 11 expressed in this letter, the \$528,000 in costs  
 12 are not indemnifiable." She says they don't  
 13 relate to a Fasteners environmental condition,  
 14 she says "all you're doing is kicking the tires"  
 15 correct?  
 16 A. Correct.  
 17 Q. Is that the reference you had in  
 18 mind earlier when you said that they  
 19 subsequently withdrew, to the extent they said  
 20 anything about possibly paying for any of these  
 21 they subsequently withdrew that position?  
 22 A. Yes, this is it.  
 23 Q. Were there particular claims that  
 24 you passed on to Fairchild that related to work  
 25 being done by contractors that was already

Page 901

1 JOHN LEASE - DIRECT  
 2 underway by Fairchild using those contractors  
 3 when you acquired the facilities?  
 4 A. Yes.  
 5 Q. Would you look at tab 20, please.  
 6 Of this is Alcoa Exhibit 52. After the first  
 7 page which is a buckslip from Mr. Miller and Mr.  
 8 Hodge if you turn to the back of that page you  
 9 see that as a letter from you to Mike Hodge for  
 10 which the typed date is March 9, 2003. Do you  
 11 see that?  
 12 A. Yes, I do.  
 13 Q. By the way, was that the actual  
 14 date that you sent the letter?  
 15 A. No. The year is incorrect. It was  
 16 actually 2004.  
 17 Q. It is a typo?  
 18 A. Yes.  
 19 Q. You see the Fairchild received  
 20 stamp right next to it is actually dated March  
 21 19, 2004?  
 22 A. Yes.  
 23 Q. So this is a letter you sent to  
 24 Fairchild about the City of Industry, California  
 25 noncompliance issues. Is this a gap analysis

57 (Pages 898 to 901.)

Page 902

1 JOHN LEASE - DIRECT  
 2 summary for the City of Industry facility?  
 3 A. Essentially, yes, it is.  
 4 Q. If you look further on in your  
 5 submission to them at page 238, beginning at 238  
 6 there are a number of pages which appear to be  
 7 invoices from a company called EnviroSolve. Do  
 8 you see that?  
 9 A. Yes, I do.  
 10 Q. What was EnviroSolve?  
 11 A. EnviroSolve was the contractor that  
 12 Fairchild was using at the time we acquired them  
 13 to operate a groundwater pump and treat system  
 14 located at the City of Industry, Temple Avenue  
 15 location.  
 16 Q. So were these invoices you were  
 17 submitting to Fairchild for services performed  
 18 by the same contractor with respect to the same  
 19 work at the same facility they'd been using?  
 20 A. Yes, in fact we had paid these  
 21 invoices and were submitting them for  
 22 reimbursement.  
 23 Q. Did Fairchild agree to pay you back  
 24 for this?  
 25 A. No, they have not.

Page 903

1 JOHN LEASE - DIRECT  
 2 Q. Now this same letter with respect  
 3 to the City of Industry facility identifies  
 4 beginning at page 232, identifies nine different  
 5 areas of noncompliance; is that right?  
 6 A. That's correct.  
 7 Q. Are these areas of environmental  
 8 health and safety at City of Industry --  
 9 A. That's true -- I'm sorry.  
 10 Q. Yes. Are these areas of  
 11 environmental health and safety at the City of  
 12 Industry facility about which the Phase I  
 13 reports had also flagged issues?  
 14 THE ARBITRATOR: There are two  
 15 facilities, aren't they, in City of Industry?  
 16 MR. CHESLER: Yes, Temple Avenue  
 17 and Unruh.  
 18 THE ARBITRATOR: Does this relate  
 19 to both of them?  
 20 MR. CHESLER: It does. If you  
 21 look, your Honor, at the first sentence of Mr.  
 22 Lease's letter which is on page 231.  
 23 THE ARBITRATOR: Right.  
 24 MR. CHESLER: You see he  
 25 references both.

Page 904

1 JOHN LEASE - DIRECT  
 2 Q. The question is whether these were  
 3 areas of noncompliance that were also flagged in  
 4 the Phase I reports?  
 5 A. Yes, in fact many of the same  
 6 issues were identified in the gap analysis work  
 7 as well as Phase I.  
 8 Q. After the Phase II work was done  
 9 were there follow on studies, investigations  
 10 performed at some or all of the 14 facilities?  
 11 A. Yes.  
 12 Q. Are those follow on studies that  
 13 were suggested by and referenced in the Phase II  
 14 analyses?  
 15 A. Yes, they were.  
 16 MR. CHESLER: Your Honor, at this  
 17 point I just want to note for the record as I  
 18 indicated earlier, there is a large bulk  
 19 Exhibit consisting of the binders on the lower  
 20 two shelves of the bookcase, all of which are  
 21 labeled Exhibit C.  
 22 THE ARBITRATOR: Right.  
 23 Q. I'll ask the witness, what is in  
 24 Exhibit C, what is the universe of materials  
 25 generally speaking that are behind those three

Page 905

1 JOHN LEASE - DIRECT  
 2 inch binders?  
 3 A. I believe Exhibit C is the  
 4 documents comprising --  
 5 THE ARBITRATOR: How many volumes  
 6 is it?  
 7 MR. CHESLER: 22, your Honor.  
 8 THE WITNESS: The Phase II  
 9 studies documentation as well as the follow on  
 10 studies that were triggered by the Phase IIs.  
 11 Q. Just to we are clear, B, Exhibit B  
 12 are the Phase IIs. So this would be the follow  
 13 on, everything that followed the Phase IIs?  
 14 A. Yes.  
 15 Q. And to the best of your knowledge  
 16 did you in fact send, in either hard copy or  
 17 electronic form, all of the materials in those  
 18 volumes that followed on the Phase II studies,  
 19 did you send them to Fairchild?  
 20 A. Yes, I did.  
 21 MR. ZUROFSKY: Your Honor, just to  
 22 note, I don't think -- we would request a set of  
 23 whatever they are introducing to give to you,  
 24 your Honor, as copy set. So we can look at the  
 25 same exhibits.

58 (Pages 902 to 905)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 906

1 JOHN LEASE - DIRECT  
 2 MR. CHESLER: Sure.  
 3 MR. SLIFKIN: We have a Bates  
 4 numbered indexes. It is all out of production  
 5 we have an indexes we can give you with the  
 6 Bates numbers on it.  
 7 MR. CHESLER: That may be a more  
 8 environmentally friendly way of doing it.  
 9 MR. SLIFKIN: We can do the  
 10 indexes right now.  
 11 MR. CHESLER: Okay. There is  
 12 nothing in this, in these volumes, your Honor,  
 13 that hasn't been subject of production before  
 14 and was not only produced in the litigation but  
 15 provided to Fairchild prior to the litigation.  
 16 Q. Would you turn to, just jumping  
 17 ahead for a moment to tab 40. This is your  
 18 Honor, a demonstrative. It is for demonstrative  
 19 purposes only. We labeled it for identification  
 20 Alcoa Exhibit 125. We have a blow up of the  
 21 same thing but your Honor has it in front of  
 22 you.  
 23 THE ARBITRATOR: It is just one  
 24 page.  
 25 MR. CHESLER: Just one page.

Page 907

1 JOHN LEASE - DIRECT  
 2 Q. What is Exhibit 125 intended to  
 3 represent, Mr. Lease?  
 4 A. This exhibit is a summary of the  
 5 major noncompliance categories that we found  
 6 across all of the Fairchild facilities. We  
 7 found we could group the issues that were  
 8 identified into nine basic categories that you  
 9 see here. And what we've done is indicated  
 10 where we had provided notice to Fairchild  
 11 regarding the noncompliance issues we found in  
 12 these nine areas.  
 13 MR. CHESLER: The column headed  
 14 Phase I reports, just so the court has it clear,  
 15 those are what is contained in bulk Exhibit A,  
 16 your Honor.  
 17 THE ARBITRATOR: Yes.  
 18 MR. CHESLER: Column headed Phase II  
 19 reports is what is contained in bulk Exhibit P.  
 20 And the column headed other correspondence is  
 21 what is contained in bulk Exhibit C.  
 22 Q. Now, Mr. Lease, would you turn to  
 23 tab 41 -- before you do that, sorry --  
 24 THE ARBITRATOR: These numbers.  
 25 MR. CHESLER: I was about to come

Page 908

1 JOHN LEASE - DIRECT  
 2 back to that your Honor, sorry.  
 3 Q. What is represented by the amount  
 4 column, what are those?  
 5 A. The amount column is the  
 6 expenditures that Alcoa has paid in each of  
 7 these areas listed here.  
 8 THE ARBITRATOR: Paid for what,  
 9 for studies and investigations?  
 10 THE WITNESS: Studies,  
 11 investigations, corrective actions.  
 12 THE ARBITRATOR: Everything is in  
 13 there?  
 14 THE WITNESS: Everything is in  
 15 here.  
 16 THE ARBITRATOR: To date? What  
 17 does this go through?  
 18 THE WITNESS: I believe it is in  
 19 the neighborhood of 15 to 16.  
 20 MR. CHESLER: The judge wants to  
 21 know when.  
 22 THE ARBITRATOR: The period of  
 23 time of costs, it has to be cut off somewhere.  
 24 THE WITNESS: This covers January  
 25 2003 through approximately September of this

Page 909

1 JOHN LEASE - DIRECT  
 2 year.  
 3 Q. Of '06?  
 4 A. '06.  
 5 THE ARBITRATOR: Is there a total  
 6 number there?  
 7 MR. CHESLER: I am about to get to  
 8 that, your Honor, in a moment. We will give you  
 9 the total. But I want to make sure the witness  
 10 describes what is and is not in here.  
 11 Q. First of all, Mr. Lease, if we were  
 12 to add up all the numbers under the amounts  
 13 column, would that represent 100 percent of all  
 14 of the funds for which Alcoa is seeking  
 15 reimbursement under the indemnification and/or  
 16 from the reserve through this proceeding.  
 17 A. No. These figures total up to  
 18 approximately 90 percent of what we have spent  
 19 and were seeking from the reserve.  
 20 Q. Why is it 90 percent rather than  
 21 100 percent?  
 22 A. Well, when we went through the  
 23 analysis with Cravath on this table the only  
 24 projects and categories that were listed here  
 25 were project where we could identify a report,

59 (Pages 906 to 909.)

Page 910

JOHN LEASE - DIRECT

notification, a piece of paper or document that was provided to Fairchild describing the issues that we were working on related to these categories.

When we looked at that total it did not account for all of the total money spent. So we had about 10 percent of the project where we could not identify a document that went to Fairchild notifying them of the issue, the plan or the corrective action.

So that's why we only totaled up to 90 percent.

Q. Is it your position -- let me ask, with respect to your position as the point person if you would --

THE ARBITRATOR: Just stop for a minute. The document that went to Fairchild that was either a Phase I report, a Phase II report or other correspondence and follow-up, is that what you're saying?

THE WITNESS: That's correct.

Q. Now, Mr. Lease, with respect to your role as the person who was providing information to Fairchild, what is your position

Page 911

JOHN LEASE - DIRECT

with respect to whether or not you have provided adequate notice to Fairchild with respect to the other 10 percent of the dollars which are not included on Exhibit 125?

A. I believe in essence we have provided adequate notice to Fairchild for the remaining 10 percent, in this case this would represent issues that were the same as the issues that we did provide distinct physical notice for. In other words we may not be able to identify a Phase I report or letter that went to Fairchild describing a particular issue at a particular plant. In a case like that it was deducted from the total.

However, as you look across that broad list of issues for which we are not representing this table we feel either through the fact these issues were very similar and in effect, present in all the Fairchild facilities, that are issues that Fairchild was working on already, that in essence the remaining 10 percent just could not be characterized sufficiently to place in any of these categories. So we do feel confident, though,

Page 912

JOHN LEASE - DIRECT

they are valid claims.

THE ARBITRATOR: With respect to the environmental issues which are the first two categories; right?

THE WITNESS: Yes.

THE ARBITRATOR: Were all of the expenditures in those categories referenced in the Phase II or Phase I reports, or were there things that came up that didn't get into those.

THE WITNESS: The environmental contamination category represents, in essence, the Phase II studies onward. Much of the discussion we had over the last day related to the Phase II work. In addition to all of the follow on studies that resulted from the Phase II work initially.

In the category of waste water, storm water, sewer and septic, the issues represented here were cited and referenced in the Phase I reports, as well as in the gap analysis reports that we forwarded to Fairchild post closing.

MR. CHESLER: Your Honor, one clarification also for the record, none of the

Page 913

JOHN LEASE - DIRECT

10 percent for which the witness excluded that because of this conservative position he took in compiling it, none of that appears in the contamination category, first category. That is that number would be the same.

THE ARBITRATOR: That is what I was wondering.

MR. CHESLER: I thought so. That number represents 100 percent. The 10 percent appears in the other categories to varying degrees.

Q. So, for example, Mr. Lease, if you notified Fairchild that there was a machine guarding problem at a particular facility and there is a piece of paper that identified that particular machine guarding, then the money associated with that would be within the 3.4 million that appears on the third line?

A. That's a fair statement, yes.

Q. But if there was some machine guarding for a different machine at the same facility or different facility for which you didn't find a piece of paper that that is in the 10 percent that wasn't included in here?

60 (Pages 910 to 913)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 914

1 JOHN LEASE - DIRECT  
 2 A. That's correct.  
 3 Q. They never accepted a single  
 4 machine guarding claim; did they?  
 5 A. They have not accepted any claims  
 6 in the four years we have been sending notices.  
 7 Q. On any topic?  
 8 A. On any issue.  
 9 Q. Again, if you gave them a piece of  
 10 paper that said you owe us a certain amount of  
 11 money for this mobile equipment noncompliance  
 12 issue and you found a piece of paper that  
 13 identified that particular piece of mobile  
 14 equipment in that particular dollar amount it is  
 15 in the 614,000; correct?  
 16 A. Correct.  
 17 Q. Even if it was an identical piece  
 18 of mobile equipment, same Crane at the same  
 19 facility or different facility and you couldn't  
 20 find that piece of paper for it you put it in  
 21 the 10 percent; correct?  
 22 A. Correct.  
 23 MR. CHESLER: Your Honor, is this  
 24 a good time to give the court reporter a break?  
 25 THE ARBITRATOR: Sure.

Page 915

1 JOHN LEASE - DIRECT  
 2 (Recess taken.)  
 3 Q. Mr. Lease, before the break we were  
 4 talking about the illustrative exhibit behind  
 5 tab 40, which is Exhibit 125.  
 6 In connection with that exhibit I  
 7 wonder if you would turn to tab 41 please which  
 8 is Alcoa Exhibit 161. Would you just explain  
 9 for the judge what Exhibit 161 is.  
 10 A. This exhibit is an expanded table,  
 11 the one we were just looking at. Basically  
 12 takes each of the nine categories and breaks out  
 13 the individual locations that we acquired from  
 14 Fairchild. The amount that has been spent in  
 15 each category for each facility. And it  
 16 provides a description of the notice of the  
 17 particular issue by direct documentation that  
 18 was made to Fairchild describing each of these  
 19 issues.  
 20 So, if you look at the first block,  
 21 for example City of Industry, this is in the  
 22 environmental contamination category, we have  
 23 spent roughly \$1.5 million in environmental  
 24 contamination investigative work.  
 25 THE ARBITRATOR: How do you know

Page 916

1 JOHN LEASE - DIRECT  
 2 that is environmental contamination from this?  
 3 THE WITNESS: On the very top bar  
 4 you will see the gray line. It says  
 5 environmental contamination.  
 6 THE ARBITRATOR: I am looking at  
 7 the Exhibit 161.  
 8 MR. CHESLER: Yes, your Honor. If  
 9 you look at the very top of the page.  
 10 THE ARBITRATOR: Okay. I see it.  
 11 So all of these on this page are environmental  
 12 contamination.  
 13 THE WITNESS: Correct.  
 14 Q. If you go to the second page,  
 15 Mr. Lease?  
 16 A. The second page breaks down the  
 17 water and waste water categories, equipment,  
 18 safety compliance, air emissions compliance in  
 19 the same fashion listing each location where  
 20 notice was provided to Fairchild describing this  
 21 particular issue.  
 22 Continuing on to the third page in  
 23 a similar fashion the categories of hazardous  
 24 materials compliance, mobile equipment, traffic,  
 25 fall protection, fire safety and electrical

Page 917

1 JOHN LEASE - DIRECT  
 2 safety compliance are listed.  
 3 THE ARBITRATOR: These are  
 4 illustrative exhibits. Were these given to Mr.  
 5 Zurofsky?  
 6 MR. ZUROFSKY: I got copies  
 7 yesterday, your Honor.  
 8 THE ARBITRATOR: Okay.  
 9 Q. Again, you're talking here about  
 10 issues, this shows where you notified them of  
 11 each of these particular issues with respect to  
 12 each of those particular facilities; correct?  
 13 A. That's correct.  
 14 THE ARBITRATOR: So going back  
 15 City of Industry, you have the amount then  
 16 environmental contamination Phase I reports.  
 17 This exhibit A, this is referring to the volumes  
 18 that are up there?  
 19 MR. CHESLER: Yes, your Honor.  
 20 THE ARBITRATOR: Okay. Then other  
 21 correspondence.  
 22 MR. CHESLER: Other correspondence  
 23 should all be citations to Exhibit C.  
 24 THE ARBITRATOR: Lease meaning  
 25 letter from Lease to Hodge or it could be an

61 (Pages 914 to 917)

Page 918

1 JOHN LEASE - DIRECT  
 2 email.  
 3 MR. CHESLER: Correct.  
 4 THE WITNESS: These were all  
 5 letters.  
 6 THE ARBITRATOR: They are all in  
 7 Exhibit C?  
 8 MR. CHESLER: Yes. One other  
 9 clarification, your Honor, so we are absolutely  
 10 clear, some of the pages in Exhibit C were  
 11 actually sent to Fairchild in the form of  
 12 electronic media, for example a CD-ROM because  
 13 they were so voluminous. But for this purpose  
 14 we printed out in hard copy what was on the CD  
 15 disk. It is in Exhibit C. But it would have  
 16 been an attachment with or enclosure to a  
 17 letter.  
 18 THE ARBITRATOR: Okay.  
 19 MR. CHESLER: We numbered  
 20 Exhibit C from 1 to whatever sequentially. The  
 21 page cites are here on 161.  
 22 THE ARBITRATOR: This says  
 23 multiple facilities on that first column of the  
 24 location, that covers?  
 25 THE WITNESS: That would

Page 919

1 JOHN LEASE - DIRECT  
 2 represent the Phase II study.  
 3 THE ARBITRATOR: When it says  
 4 multiple facilities, what facilities is that  
 5 referring to?  
 6 THE WITNESS: That refers to the  
 7 14 facilities where Phase II study was  
 8 conducted.  
 9 THE ARBITRATOR: It refers to all  
 10 of them?  
 11 THE WITNESS: Yes.  
 12 THE ARBITRATOR: That's the amount  
 13 983 is what the costs were for the  
 14 investigations?  
 15 THE WITNESS: That's correct.  
 16 THE ARBITRATOR: In Phase I. No,  
 17 you are not charging for that.  
 18 MR. CHESLER: That's correct.  
 19 THE ARBITRATOR: You received  
 20 indemnification for that. So it would be the  
 21 Phase II reports. And the follow on reports;  
 22 right, for that 983,000 number, that covers the  
 23 Phase II reports and the follow on reports?  
 24 MR. CHESLER: Just the Phase IIs  
 25 your Honor, just the Phase IIs. To the extent

Page 920

1 JOHN LEASE - DIRECT  
 2 there were follow on studies they were typically  
 3 done with respect to particular facilities.  
 4 That would be under the particular facilities  
 5 relating to whatever substantive category they  
 6 related to.  
 7 THE ARBITRATOR: But this relates  
 8 to all of the Phase II reports?  
 9 MR. CHESLER: That's right. They  
 10 were done for the 14 facilities.  
 11 THE ARBITRATOR: Okay.  
 12 MR. CHESLER: May I proceed, your  
 13 Honor?  
 14 THE ARBITRATOR: Yes.  
 15 MR. CHESLER: Thank you.  
 16 Q. Mr. Lease, would you turn to tab  
 17 24, which is Exhibit 55, Alcoa 55.  
 18 A. Okay.  
 19 Q. Hold on one second, I may have  
 20 taken you to the wrong chart sorry tab 12, I  
 21 apologize. Wrong tab.  
 22 Now, do you recognize Exhibit C,  
 23 page 4222 behind tab 23 as a letter you sent to  
 24 Mr. Beckford at Fairchild on or about February  
 25 2, 2005?

Page 921

1 JOHN LEASE - DIRECT  
 2 A. Yes.  
 3 Q. That relates to the Temple Avenue  
 4 City of Industry facility?  
 5 A. Yes.  
 6 Q. It says "Work plan reports" I am  
 7 reading from the subject line "Work plan reports  
 8 for supplemental soil and groundwater testing  
 9 and extraction well installation and extraction  
 10 testing." Correct?  
 11 A. That's correct.  
 12 Q. If you look down at the bottom of  
 13 that page under enclosures, it says you enclosed  
 14 two work plans from Mission Geoscience; correct?  
 15 A. That's correct.  
 16 Q. That was a consulting firm you were  
 17 using?  
 18 A. Yes, they were located in Los  
 19 Angeles, we were using them for remediation  
 20 investigation.  
 21 Q. One of the two work plans you sent,  
 22 the one listed as item two is a work plan for  
 23 extraction well installation and aquifer testing  
 24 at that facility dated January 1, 2005; correct?  
 25 A. Correct.

62 (Pages 918 to 921)

MERRILL LEGAL SOLUTIONS  
 (800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 922

1 JOHN LEASE - DIRECT  
 2 Q. You sent this letter to Mr.  
 3 Beckford on or about February 2, 2005; correct?  
 4 A. That's correct.  
 5 Q. Had any work actually been done  
 6 with respect to that particular work plan when  
 7 you sent this material along to Mr. Beckford?  
 8 A. No, it did not.  
 9 Q. Did you ever get any substantive  
 10 comments back from Fairchild about the work plan  
 11 you proposed to do with respect to the  
 12 extraction well installation and aquifer testing  
 13 at the Temple Avenue facility?  
 14 A. No.  
 15 Q. Would you turn to tab 28, please.  
 16 This is Exhibit C beginning at page 4517. Do  
 17 you recognize this as a letter that you sent  
 18 to --  
 19 THE ARBITRATOR: Sorry, do you  
 20 want to wait just a second.  
 21 MR. CHESLER: Yes, your Honor.  
 22 THE ARBITRATOR: What is the next  
 23 exhibit?  
 24 MR. CHESLER: Tab 28, which is  
 25 bulk Exhibit C, beginning at page 4517.

Page 923

1 JOHN LEASE - DIRECT  
 2 Q. Do you recognize this as a letter  
 3 you sent to Ms. Hall at Fairchild on or about  
 4 April 5, 2005?  
 5 A. Yes.  
 6 Q. Does this relate to a work plan for  
 7 supplemental subsurface investigation at  
 8 Fullerton?  
 9 A. Yes.  
 10 Q. I see in the first line of your  
 11 letter, it says "Enclosed for your information  
 12 is a work plan that describes a proposed scope  
 13 of work for supplemental soil and groundwater  
 14 sampling."  
 15 Had any of that work actually been  
 16 done at the time you sent this material to  
 17 Ms. Hall on or about April 5, 2005?  
 18 A. No.  
 19 Q. Did you ever get any substantive  
 20 comments back from Ms. Hall about that proposed  
 21 work at the Fullerton site?  
 22 A. No, I did not.  
 23 Q. Would you look at tab 29. This is  
 24 Exhibit C, beginning at page 4938. Do you  
 25 recognize this as a letter you sent to Ms. Hall

Page 924

1 JOHN LEASE - DIRECT  
 2 on or about December 16, 2005 concerning the  
 3 City of Industry, Temple Avenue site and work  
 4 plan for well installation and remedial action?  
 5 A. Yes.  
 6 Q. At the time you sent this material  
 7 to Ms. Hall had any of the work relating to that  
 8 project yet been done?  
 9 A. No, it had not.  
 10 Q. Did you ever get any substantive  
 11 comments from Ms. Hall about that proposed plan?  
 12 A. No.  
 13 Q. Would you turn back to tab 23,  
 14 please. I asked you about one of the two  
 15 enclosures that went along with this letter a  
 16 few moments ago, enclosure number 2.  
 17 Let's go back to enclosure number 1  
 18 that is referenced at the bottom of that page,  
 19 first page. It says "work plan for supplemental  
 20 soil and groundwater investigation." This is  
 21 from Exhibit C, page 4222; correct?  
 22 A. Correct.  
 23 Q. That work plan says it is dated  
 24 July 12, 2004 and I am partly sent it to  
 25 Ms. Hall in early February of 2005; correct?

Page 925

1 JOHN LEASE - DIRECT  
 2 A. Correct.  
 3 Q. So had any work been done up to  
 4 that point with respect to that work plan?  
 5 A. Likely it had been.  
 6 Q. Had Fairchild been doing  
 7 remediation work at the Temple Avenue site with  
 8 respect to soil and groundwater prior to the  
 9 time that you acquired that site from them?  
 10 A. Yes, they had.  
 11 Q. Now, I would like you to turn to  
 12 tab 24, Alcoa Exhibit 55. Do you recognize this  
 13 as a consultant's letter from EnviroSolve to Mr.  
 14 Miramadi at Fairchild from May of 2002 relating  
 15 to the soil and groundwater work that they were  
 16 using this very consultant for at the Temple  
 17 Avenue site prior to the sale of the business to  
 18 Alcoa?  
 19 A. Yes.  
 20 Q. In fact would you turn to page  
 21 3323, please of that document.  
 22 A. Okay.  
 23 Q. It is the page that has Mr.  
 24 Schmidt's signature on it; do you see that?  
 25 A. Yes, I do.

63 (Pages 922 to 925.

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 926

JOHN LEASE - DIRECT

1 Q. You see Mr. Schmidt wrote to  
2 Fairchild, wrote to Mr. Miramadi that Fairchild  
3 is now in the process, I am reading from the  
4 paragraph immediately above his signature,  
5 "Fairchild is now in the process of preparing a  
6 letter requesting closure of the soil  
7 remediation activities at the site. And it is  
8 expected that" then there is an acronym, is that  
9 a government agency of some type?  
10 A. Yes, that is the Regional Water  
11 Quality Control Board.  
12 Q. In California?  
13 A. In California.  
14 Q. "Will require a verification  
15 sampling and testing program consisting of a  
16 soil vapor study and collection and analysis of  
17 soil samples" it goes on to say "The present  
18 groundwater remediation activity is expected to  
19 continue for one to several years before  
20 residual VOC concentrations have been reduced to  
21 levels sufficiently low to request closure of  
22 groundwater remediation activities from the  
23 regional water quality board." It goes on.  
24 In fact were you continuing the

Page 927

JOHN LEASE - DIRECT

1 same environmental work relating to soil and  
2 groundwater after the acquisition that had been  
3 underway by Fairchild before the acquisition?  
4 A. Essentially we were, yes.  
5 Q. Did Fairchild agree to pay you for  
6 the continuation of that work after you acquired  
7 the facility?  
8 A. No. I think as I mentioned  
9 earlier, they did not offer payment for this  
10 work.  
11 Q. Would you turn to tab 25, please  
12 this is a Phase II environmental site  
13 investigation report done for Alcoa by ERM;  
14 correct?  
15 A. Correct.  
16 Q. This relates to the Montbrison  
17 facility in France?  
18 A. Yes, it does.  
19 Q. You provided these Phase II reports  
20 to Fairchild; correct?  
21 A. Yes, we did.  
22 Q. In the fall of 2003?  
23 A. Yes.  
24 Q. Would you look at page 32273.

Page 928

JOHN LEASE - DIRECT

1 There is a heading toward the bottom of that  
2 page titled Environmental Issues Of Known  
3 Concern; correct?  
4 A. That's correct.  
5 Q. You see that ERM reported to you  
6 and you passed on to Fairchild that they, the  
7 same consulting company that you were using had  
8 completed a previous Phase I assessment of the  
9 site back in December of 1998, that is when  
10 Fairchild owned it; correct?  
11 A. That's my understanding, yes.  
12 Q. And following the recommendations  
13 of that assessment a limited Phase II was  
14 performed in January of 1999; correct?  
15 A. Correct.  
16 Q. The environmental assessments were  
17 performed for Fairchild. According to the Phase  
18 II it says "It was considered likely that a  
19 remediation regarding total petroleum  
20 hydrocarbons or TPH and chlorinated hydrocarbons  
21 would have to be performed at the site."  
22 Did you understand that Fairchild  
23 was told that way back in 1999?  
24 A. That is my understanding from

Page 929

JOHN LEASE - DIRECT

1 reading this, yes.  
2 Q. If you go over to the next page,  
3 32274 in the text in the bottom two paragraphs  
4 of the page you see that ERM told you that in  
5 the 1999 Phase II report?  
6 THE ARBITRATOR: Hold it. Let me  
7 just make a note here.  
8 MR. CHESLER: We are now on  
9 page 32274.  
10 THE ARBITRATOR: Okay.  
11 MR. CHESLER: I am at the next to  
12 the last paragraph on the page.  
13 Q. It says, you were informed were you  
14 not and you passed this on to Fairchild "In the  
15 1999 Phase II report prepared for Fairchild, ERM  
16 concluded that in accordance with French  
17 legislation a person that is aware of an impact  
18 to groundwater --"  
19 THE ARBITRATOR: Sorry, this is  
20 page 2274?  
21 MR. CHESLER: 32274. Next to the  
22 last paragraph on the page.  
23 THE ARBITRATOR: Yes.  
24 MR. CHESLER: Begins "The 1999

64 (Pages 926 to 929)

Page 930

1 JOHN LEASE - DIRECT  
 2 Phase II report."  
 3 THE ARBITRATOR: "Concluded that  
 4 in accordance?"  
 5 MR. CHESLER: Yes, sir.  
 6 Q. "In accordance with French  
 7 legislation from January of '92 a person that is  
 8 aware of an impact to groundwater, which  
 9 hydraulically is or may be connected to water  
 10 used for drinking is to inform the local  
 11 authorities in charge of environmental issues."  
 12 That is what you were informed?  
 13 A. Yes.  
 14 Q. It goes on in the next paragraph to  
 15 say "In 1999, ERM recommended to Fairchild  
 16 further soil and groundwater investigations to  
 17 verify the results and to delineate the impacted  
 18 areas." Correct?  
 19 A. That's correct.  
 20 Q. They told you that despite that  
 21 recommendation, despite French law Fairchild did  
 22 no further studies and in fact no further  
 23 studies were done so far as ERM was aware until  
 24 the Phase II study that Alcoa commissioned of  
 25 which this is the report; correct?

Page 931

1 JOHN LEASE - DIRECT  
 2 A. I think they reference here the  
 3 actually the Phase I assessment in May 2002.  
 4 That was the first study following the 1999  
 5 study.  
 6 Q. Absolutely. The Phase I was the  
 7 one Alcoa commissioned in contemplation of  
 8 entering into this agreement?  
 9 A. Correct.  
 10 Q. You sent that information as part  
 11 of the Phase II report to Fairchild about their  
 12 own prior investigations and their own prior  
 13 findings and their own prior failure to do  
 14 anything, and what the was the response you got  
 15 in substance?  
 16 A. There is no substantive comment.  
 17 They basically refused to pay for this Phase II  
 18 investigation.  
 19 Q. Would you turn to page 32314,  
 20 please of the same document, still the same  
 21 exhibit. 32314. Do you have that page?  
 22 THE ARBITRATOR: Not yet.  
 23 MR. CHESLER: It corresponds to  
 24 page 47 of the report.  
 25 THE ARBITRATOR: I have it.

Page 932

1 JOHN LEASE - DIRECT  
 2 Q. Mr. Lease, do you have it?  
 3 A. Yes, I have it.  
 4 Q. I would like you to look at the  
 5 next to the last paragraph on the page the one  
 6 beginning "with respect to."  
 7 A. Okay.  
 8 Q. It says "With respect to the  
 9 current groundwater quality in the general area,  
 10 there are exceedances of certain substance  
 11 limits." Is that right?  
 12 A. Yes.  
 13 Q. In the middle of that paragraph it  
 14 says "Nonetheless, in France, it is a generally  
 15 accepted practice to report such findings to the  
 16 relevant authorities even though there is no  
 17 legal requirement referred to in the prior  
 18 sentence?"  
 19 A. That's correct.  
 20 Q. They go on "Should the local  
 21 authorities be advised it can be reasonably  
 22 anticipated they are going to require one or  
 23 more of several things including something  
 24 called an SRA." Correct?  
 25 A. That's correct.

Page 933

1 JOHN LEASE - DIRECT  
 2 Q. What is an SRA?  
 3 A. SRA stands for simplified risk  
 4 assessment.  
 5 Q. When a governmental authorities  
 6 request a simplified risk assessment and it is  
 7 done that typically leads to a further  
 8 assessment called a detailed risk assessment;  
 9 correct?  
 10 A. It is based on the findings of the  
 11 simplified risk assessment of certain values are  
 12 exceeded in that risk assessment it triggers the  
 13 detailed risk assessment.  
 14 Q. In fact, you did notify the French  
 15 authorities they did want a simplified risk  
 16 assessment and you did one; correct?  
 17 A. That's correct.  
 18 Q. That then led to performance of a  
 19 detailed risk assessment; correct?  
 20 A. Correct.  
 21 Q. I would like you to turn to tab 26.  
 22 Tab 26 is from bulk Exhibit C beginning on  
 23 page 4342; correct?  
 24 A. That's correct.  
 25 Q. This is a letter from you to Mr.

65 (Pages 930 to 933,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 934

1 JOHN LEASE - DIRECT  
 2 Beckford dated February 25, 2005; correct?  
 3 A. Correct.  
 4 Q. In fact you sent along with this  
 5 letter some documentation which is listed in  
 6 four numbered items in the middle of that page;  
 7 right?  
 8 A. That's correct.  
 9 Q. The first of which is a scope of  
 10 work and cost estimate for the detailed risk  
 11 assessment at Montbrison; correct?  
 12 A. That's correct.  
 13 Q. Had you done the detailed risk  
 14 assessment before you sent this scope of work to  
 15 Fairchild?  
 16 A. No, we had not.  
 17 Q. Did they ever come back with any  
 18 substantive comments about it?  
 19 A. Not that I recall, no.  
 20 Q. So you did the detailed risk  
 21 assessment and then the French regulators  
 22 required some further investigation; didn't  
 23 they?  
 24 A. Correct.  
 25 Q. Would you turn to tab 27.

Page 935

1 JOHN LEASE - DIRECT  
 2 A. Okay.  
 3 Q. Is this a letter in which you sent  
 4 to Ms. Hall in July of 2006 various  
 5 correspondence, communications with the French  
 6 regulators that followed on the detailed risk  
 7 assessment as to which they never gave you  
 8 comments when you sent them the scope of work in  
 9 advance?  
 10 A. Yes.  
 11 Q. Did you have an understanding that  
 12 you were -- let me withdraw that.  
 13 What was your understanding of who  
 14 conducted and controlled interactions with  
 15 government agencies with respect to these  
 16 facilities as of 2006?  
 17 A. Under the agreement, the sales  
 18 agreement?  
 19 Q. Yes.  
 20 A. My understanding was that Alcoa was  
 21 to conduct all contact and management of  
 22 remedial projects with the government.  
 23 Q. Then you had these documents that  
 24 had been submitted to the government and you  
 25 were providing them to Fairchild with this

Page 936

1 JOHN LEASE - DIRECT  
 2 letter?  
 3 A. That's correct.  
 4 Q. Did you believe that that was what  
 5 you were supposed to be doing under the  
 6 agreement?  
 7 A. That's my understanding.  
 8 Q. One of the things that was included  
 9 in this letter, the third item says "Proposal  
 10 from ERM to additional work to address the  
 11 comments from the French agency." Correct?  
 12 A. That's correct.  
 13 Q. Had the work actually been done by  
 14 ERM that was addressed in that proposal?  
 15 A. No.  
 16 Q. At the time you sent it?  
 17 A. No. It had not.  
 18 Q. Did you ever get any substantive  
 19 comments back from Fairchild with respect to  
 20 that proposed work?  
 21 A. No, I did not.  
 22 Q. Would you turn to tab 32, please.  
 23 You recognize this as a letter you sent to  
 24 Ms. Hall with some attachments on or about  
 25 February 22, 2006?

Page 937

1 JOHN LEASE - DIRECT  
 2 A. Yes.  
 3 Q. This is from Exhibit C beginning at  
 4 page 7881; correct?  
 5 A. That's correct.  
 6 Q. Now you sent her, apparently a  
 7 Phase I report from a California agency which  
 8 uses the acronym DTSC; correct?  
 9 A. That's correct.  
 10 Q. The Department of Toxic Substances  
 11 Control?  
 12 A. Yes.  
 13 MR. ZUROFSKY: Your Honor, it  
 14 doesn't say he sent the Phase I report, he sent  
 15 a findings from investigation to confirm the  
 16 Phase I report. The Phase I report is dated  
 17 1996, I believe. I want to make sure that is  
 18 clear.  
 19 MR. CHESLER: Sorry, I misspoke.  
 20 You're correct. Thank you, counsel.  
 21 Q. So the report presented findings  
 22 from a visit done by the DSTC to the Torrance  
 23 site that was conducted in January 2006; is that  
 24 correct?  
 25 A. That's correct.

66 (Pages 934 to 937)

Page 938

JOHN LEASE - DIRECT

- 1  
2 Q. That site visit and report was done  
3 to verify information contained, as counsel just  
4 corrected me, in a Phase I report submitted on  
5 December 27, 1996 by Fairchild Fasteners to that  
6 agency; correct?  
7 A. Correct.  
8 Q. Did you understand when you sent  
9 this material that you had received, this report  
10 from the government agency, that that was what  
11 you were supposed be doing under the agreement?  
12 A. That is my understanding.  
13 Q. In the provision related to  
14 documents submitted to and received from the  
15 government?  
16 A. Yes.  
17 Q. Until you received this document  
18 from the government you didn't have it to send  
19 to Fairchild; did you?  
20 A. That's correct.  
21 Q. Now if you turn to tab 34, this is  
22 from Exhibit C, beginning at page 7932. Is this  
23 in fact a letter and enclosure that you sent to  
24 Ms. Hall a few weeks later on March 2, 2006?  
25 A. Yes, it is.

Page 939

JOHN LEASE - DIRECT

- 1  
2 Q. This says you were enclosing a copy  
3 of a consent agreement between Alcoa and the  
4 DTSC which related to this same facility in  
5 Torrance; correct?  
6 A. Yes.  
7 Q. Did you have an understanding of  
8 whether or not Alcoa was obligated to involve  
9 Fairchild in any negotiation of or discussions  
10 with the government concerning environmental  
11 consent decrease in 2006?  
12 A. No. My understanding was that  
13 activity was solely the responsibility of Alcoa.  
14 Q. Having entered into this decree  
15 effective February 21, within about ten days you  
16 sent it to Fairchild; didn't you?  
17 A. Yes, I did.  
18 Q. Did you understand that was what  
19 you were supposed to be doing under the  
20 agreement?  
21 A. Yes.  
22 Q. Before this decree was ever  
23 entered, did you make any request to Fairchild  
24 for reimbursement of investigative work relating  
25 to the same environmental issues that were

Page 940

JOHN LEASE - DIRECT

- 1  
2 ultimately addressed by this decree?  
3 A. I believe we had.  
4 Q. I want you to look back at tab 19.  
5 THE ARBITRATOR: Is this a Consent  
6 Decree with respect to the work originally  
7 started by Fairchild before you took over?  
8 THE WITNESS: The 1996 report was  
9 an assessment report conducted --  
10 THE ARBITRATOR: By a State  
11 agency?  
12 THE WITNESS: By a State agency,  
13 based on information provided by Fairchild.  
14 THE ARBITRATOR: Right. There was  
15 no work being done under that at the time you  
16 took over?  
17 THE WITNESS: That, I'm not  
18 certain of. I am not certain.  
19 THE ARBITRATOR: Is this a  
20 follow-up to that report?  
21 THE WITNESS: In essence, it was.  
22 I believe what happened was the DTSC came back  
23 to the Torrance site with the 1996 report and  
24 updated it based on their tour and assessment of  
25 the facility.

Page 941

JOHN LEASE - DIRECT

- 1  
2 THE ARBITRATOR: This followed  
3 from that?  
4 THE WITNESS: Yes.  
5 THE ARBITRATOR: Okay.  
6 Q. Now, Mr. Lease, would you look at  
7 tab 19, Alcoa Exhibit 103.  
8 A. Okay.  
9 Q. This appears to be a letter to you  
10 from Ms. Hall dated February 25, 2005; correct?  
11 A. That's correct.  
12 Q. This is the same letter we looked  
13 at earlier where in the footnote that begins on  
14 page 340 Ms. Hall told you that upon further  
15 analysis they weren't going to pay you for any  
16 of the \$528,000 related to Phase II studies you  
17 had previously submitted invoices for, do you  
18 remember that?  
19 A. Yes.  
20 Q. In the body of this letter if you  
21 look on page 340, the same page where that  
22 footnote begins, you see in the next to the last  
23 paragraph, Ms. Hall informs you that, according  
24 to her, unless you find an environmental  
25 condition, your commissioning of assessments --

67 (Pages 938 to 941,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 942

JOHN LEASE - DIRECT

MR. CHESLER: I am in the next to the last paragraph on the page, your Honor. I am not reading it verbatim. I am just summarizing the paragraph asking if the witness agrees with it.

THE ARBITRATOR: Go ahead.

Q. Unless you find what is called an environmental condition, then any environmental assessments you do are, in her judgment, I am now reading on the last line of that paragraph "An ordinary business expense voluntarily incurred by Alcoa." Is that what she informed you?

A. That's correct, that is what the statement says.

Q. She wasn't going to pay for those voluntary incurances; correct?

A. Correct.

Q. If you look over at the next page she specifically references Torrance, the last paragraph, page 341 the facility we were just talking about. This is before the decree ever happened. This is about a year before the state folks showed up with the site visit and

Page 943

JOHN LEASE - DIRECT

ultimately you entered into a decree with them; correct?

A. Yes. Correct.

Q. A year before that she is telling you with respect to Torrance according to Alcoa's Phase I and Phase II assessments shows some signs of environmental contamination, however she goes on to say "Groundwater contaminants are the likely product of offsite sources."

Then she says "In any event, all of the assessments for this site, like all of the other assessments and characterizations are not Fasteners Environmental Liabilities and unless and until remedial action commences, there is no basis for a claim under 11.6."

So with respect same Torrance facility, for that matter all of them, but the same Torrance facility before there ever was a site visit by the state agency, before there ever was a decree she told you you weren't getting any money; didn't she?

A. Yes.

Q. Now you have the decree, you sent

Page 944

JOHN LEASE - DIRECT

them the decree. Let's look at page 35 -- tab 35 to see what response you got after the decree. We just seen the response before.

THE ARBITRATOR: The decree provides for some type of remedial action?

THE WITNESS: I believe the decree primarily focuses on further characterization of the site.

Q. Let's look at Exhibit 107 which appears behind tab 35 this is a follow on about the Torrance facility; isn't it?

A. Yes.

Q. You submitted the materials and told them what it is you are going to do there pursuant to the decree; is that right?

A. That's correct.

Q. Let's look at the second paragraph of Ms. Hall's letter. She says "Our position on Alcoa's incurring expenses foresight assessments and investigations has been thoroughly set forth in our prior correspondence" she cites a letter of March 20.

Then she says "In addition, without waiving its previously asserted defenses it is

Page 945

JOHN LEASE - DIRECT

Fairchild's position the scope of the facility investigation work plan" that is the work plan you were proposing to do pursuant to the decree; correct?

A. Correct.

Q. "Is overly and unnecessarily expansive and not justified" is that her position?

A. Yes.

Q. No money for what you did before the decree, no money for what you were going to do after the decree; right?

A. Right.

Q. Would you turn to tab 36, I just have one or two more topics, your Honor, I'll be done this is in bulk Exhibit C beginning page 4931. Do you have that document?

A. Yes, I do.

Q. This is a letter and long listing of project numbers, project titles and invoice amounts; correct?

A. Correct.

Q. You say in the text of the letter that, I am looking at the first paragraph --

68 (Pages 942 to 945)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 946

1 JOHN LEASE - DIRECT  
 2 THE ARBITRATOR: Tab 36?  
 3 MR. CHESLER: Tab 36, yes, your  
 4 Honor.  
 5 Q. In the first paragraph of your  
 6 letter you tell Ms. Hall in connection with the  
 7 mediation that was then scheduled for shortly  
 8 thereafter you were sending a chart and that  
 9 some of the items on the chart had an asterisk  
 10 or a double asterisk; correct?  
 11 A. Correct.  
 12 Q. Those items have not been the  
 13 subject of prior notice under the contract that  
 14 you are hereby giving them notice.  
 15 A. Correct.  
 16 Q. You say with respect to the items  
 17 that have a double asterisk, I am now looking at  
 18 the last sentence of that first paragraph, you  
 19 have not yet incurred any expenses; correct?  
 20 A. That's correct.  
 21 Q. Let's look at the next page which  
 22 is the first page of the chart. I am going to  
 23 go to the very first item with a single asterisk  
 24 which is eighth line down from the top project  
 25 number 36010-009, confined space compliance.

Page 947

1 JOHN LEASE - DIRECT  
 2 There is an asterisk. According to your cover  
 3 letter, if I understood it correctly you're  
 4 saying this is an item as to which we spent some  
 5 money but haven't given you prior notice.  
 6 Did it turn out were you right or  
 7 wrong about that one?  
 8 A. In looking back through the record  
 9 we were wrong about this one.  
 10 Q. Wrong in what sense?  
 11 A. We actually had provided  
 12 documentation to Fairchild which addressed this  
 13 particular expenditure.  
 14 Q. Was that true of some of the other  
 15 expenditures in here?  
 16 A. I believe it was, yes.  
 17 Q. So, for example, let's go back for  
 18 a moment to tab 20. Tab 20 is Alcoa Exhibit 52,  
 19 right. This was your gap assessments summary for  
 20 City of Industry; correct?  
 21 A. Correct.  
 22 Q. If you look page 235 of that  
 23 document, it is a chart, in fact on page 235,  
 24 the fifth item down is the same project  
 25 36010-009 confined space compliance?

Page 948

1 JOHN LEASE - DIRECT  
 2 A. That's right.  
 3 Q. The dollars are very slightly off  
 4 this is 22,000 and change, later on the total  
 5 turned out to be 23,000 and change. But that is  
 6 the same project; isn't it?  
 7 A. Yes, it is.  
 8 Q. In fact, although you put a star on  
 9 it that was just a mistake?  
 10 A. That's correct.  
 11 Q. There are others like that; aren't  
 12 there?  
 13 A. Yes, there are.  
 14 Q. For example, if you look at the  
 15 next one, that is the next one that has a single  
 16 star back on tab 36, page 4932, that same chart  
 17 with asterisk, the next one is a mobile  
 18 equipment compliance item, 36010-11; right?  
 19 A. Right.  
 20 Q. For 3,000 and change. That one  
 21 also disclosed back in the tab 20 entry although  
 22 it is a slightly different number. It is about  
 23 2,400 and change; right?  
 24 A. Yes, that's correct.  
 25 Q. Some of the asterisks in this

Page 949

1 JOHN LEASE - DIRECT  
 2 letter you sent to Ms. Hall in July of '05 were  
 3 just wrong, you had given them notice twice in  
 4 effect?  
 5 A. Correct.  
 6 Q. Some were correct, you hadn't given  
 7 them prior notice and you gave it to them now?  
 8 A. That's correct.  
 9 Q. As to double stars you were giving  
 10 them notice and you hadn't even spent any money  
 11 yet?  
 12 A. Correct.  
 13 Q. Now flip to tab 37, please. Is  
 14 this an updated chart, updated from the one we  
 15 just looked at behind tab 36?  
 16 A. Yes, it is.  
 17 Q. This is for the record Alcoa  
 18 Exhibit C, bulk Exhibit C beginning at page  
 19 7924; right?  
 20 A. Correct.  
 21 Q. In this one did you correct a  
 22 couple of math errors or accounting errors?  
 23 A. I believe that we did at this  
 24 point. We cleared up some of the misstatements  
 25 we had made in the earlier table.

69 (Pages 946 to 949,

Page 950

JOHN LEASE - DIRECT

Q. Look for example, I am on page that end now 1101 or at the top page 7926 of Exhibit C, a chart with a lot of entries in it.

A. Okay.

Q. If you look at item 26 which has to do with groundwater monitoring at the Temple Avenue facility, do you see that?

A. Yes.

Q. It says adjusted the column, next to the last column to the right says adjusted total through December 2005 is \$85,687. It says the adjustments is 85,687. Was that a correction you were making? You know what, I may have given you wrong one. I went one line too low. I meant to look at line 25, the one right above that.

Line 25 is for the Unruh Avenue site, soil and groundwater scoping and follow-up.

A. Okay.

Q. You see it is the total was 75,000 and change through May. The adjusted total is 181. The adjustment is of \$105,000. I think I am creating more confusion. I am giving you the

Page 951

JOHN LEASE - DIRECT

letter about corrections, and corrections are behind the next tab. I that is why you are having trouble with my question.

Let's stay with tab 37. Tab 37 was updated version of the chart as you originally provided as shown behind tab 36?

A. That's correct.

Q. Now, go to tab 38, I apologize both to the court and to you. Is this yet another chart you provided to Ms. Hall, this one in December of this past year, '06?

A. That's correct. Yes.

Q. Now, with respect to item 25, which appears on the page numbered 24000 in the upper right-hand corner?

A. Okay.

Q. Did you in fact correct item 25?

A. Yes, we did. We discovered an accounting error in our records so we reduced the amounts by \$90,620 which was exactly half.

Q. Similarly if you go to page 24003, the last item on that page, number 155 was this another accounting error that was corrected?

A. Yes, it is.

Page 952

JOHN LEASE - DIRECT

Q. You reduced this one by \$39,000 and change?

A. Correct.

Q. Are you familiar with something within Alcoa called the PAR process, P-A-R?

A. Yes, I am.

Q. What is the PAR process?

A. PAR stands for project approval request process.

Q. What is that process?

A. It is a process that was developed by the business that assumed the Fairchild facilities upon acquisition. It is, in essence, a way for the business and the locations in the business to propose a project, in this case it would be an EHS compliance project, to be carried out at a facility to correct a compliance issue, noncompliance issue.

The way it works a facility will complete the PAR form which includes a description of the issue related to compliance. It also has a requirement that the facility complete a regulatory analysis of the situation to ensure that in fact that issue and that

Page 953

JOHN LEASE - DIRECT

project to correct noncompliance issue is based on a regulatory requirement that exists for that facility.

At that point the draft PAR is sent from the plant location to the business unit. It under goes technical and regulatory review to ensure that in fact the regulatory citation is valid and there is a basis for carrying out that project to correct the noncompliance situation.

Once that has been verified the form is taken to the business unit management team. They basically sign off on each project approval request form before the fund are basically approved for that action.

Q. Was that process followed here for the compliance items that have been submitted to Fairchild for reimbursement?

A. Yes, all of these numbers that are listed in the second column as project numbers are in fact numbers that were assigned to each individual PAR.

Q. Was that a process that was developed uniquely for this transaction or is that something Alcoa has used generally?

70 (Pages 950 to 953)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 954

JOHN LEASE - DIRECT

1 A. It was really developed for this  
2 transaction. Because we felt there was a need  
3 to document that everything we did under the  
4 corrective action process was in fact justified  
5 for reimbursement from the escrow fund that was  
6 set up with Fairchild.

7 Q. Mr. Lease, do you believe you gave  
8 Fairchild adequate notice of the items for which  
9 Alcoa is seeking indemnification in this  
10 proceeding?

11 A. Yes, I do.

12 Q. Through what forms of notice, what  
13 actual physical forms of notice did you do that?

14 A. Primarily the Phase I reports which  
15 in essence started the notice process. Followed  
16 by the site assessment reports, the gap analysis  
17 reports that were undertaken at the four major  
18 facilities. And follow up correspondence  
19 associated with those reports.

20 For the remedial projects that were  
21 undertaken starting with the Phase I reports  
22 that identified the areas of concern for  
23 remedial project, followed by Phase II scopes of  
24 work which identified where we were going to  
25

Page 955

JOHN LEASE - DIRECT

1 undertake remedial action, followed by the Phase  
2 II reports, which reported on the findings from  
3 the Phase II investigations. And also contained  
4 specific information that detailed where that  
5 next phase of the investigation was to take  
6 place to address areas where we found  
7 contamination or threatened contamination.

8 So that whole body of work, in  
9 essence, covers our, that is our view of the  
10 forms of notice that we provided to Fairchild  
11 that covers this list of projects that we see in  
12 this table.

13 Q. I believe it is your testimony you  
14 have been the person who has been sending and  
15 receiving communications to and from Fairchild  
16 with respect to these sites for something  
17 approaching four years now, since beginning of  
18 2003; is that right?

19 A. That's correct.

20 Q. Based upon that four years of  
21 experience in this position, have you formed an  
22 opinion about Fairchild's intention to pay Alcoa  
23 anything with respect to these indemnification  
24 claims?  
25

Page 956

JOHN LEASE - DIRECT

1 A. Yes, I have.

2 Q. What is that opinion?

3 A. Well, in light of the fact they  
4 have not paid a single claim, now number close  
5 to 200 claims, I think that is certainly proof  
6 that there is no intention to pay on their part.

7 Coming before that going to the  
8 early years of this acquisition, obviously the  
9 Phase I reports that we commissioned created  
10 findings of a compliance nature and remediation  
11 nature that concerned us. It appeared as though  
12 there were significant compliance issues across  
13 all the facilities.

14 Since these facilities, in essence,  
15 do the same things in terms of their operations,  
16 we saw a lot of commonality across the  
17 facilities in terms of compliance issues. That  
18 were discovered in the Phase Is. Similarly the  
19 contamination issues related to soil and  
20 groundwater were similar. Since these  
21 facilities use similar chemicals such as TCE,  
22 PCE and oils and solvents of other compositions.  
23 So we had a picture going into this as to what  
24 we might find.  
25

Page 957

JOHN LEASE - DIRECT

1 When we did our rapid integration  
2 visits we, in essence, confirmed what the Phase  
3 I assessments found that being noncompliance  
4 issues across environmental health and safety  
5 disciplines.

6 In the operations we found  
7 contamination, that required further  
8 investigation and maybe more disturbingly we  
9 found cases that indicated there were practices  
10 at Fairchild related to illegal reporting and  
11 record keeping that created a significant level  
12 of concern within Alcoa.

13 As an example, one year after we  
14 acquired Fairchild the St. Cosme facility had  
15 over 500 waste water violations reported into  
16 the agency. That one facility in that one area  
17 had more violations than the entire Corporation  
18 in the environmental area.

19 That's a case in point. Certainly  
20 this business unit with its performance created  
21 a significant level of attention, the upper  
22 levels of the company. Their injury rates were  
23 four times what Alcoa's injury rate was  
24 corporate-wide.  
25

71 (Pages 954 to 957,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 958

JOHN LEASE - DIRECT

So, we felt there was a significant basis for going forward to complete the corrective actions as quickly as possible. In essence, Alcoa was liable at this point for all of the issues that came into the company from the Fairchild acquisition. We faced legal liability and we faced danger to our work force with safety issues as well as health issues.

So our goal was to fix this as quickly as possible. Our baseline level of performance in the company is zero noncompliance. That was far from what we found with Fairchild.

As we began to apprise Fairchild of these issues, many of which they had discovered themselves and were working to correct, we received information back that said well, you don't really see things here that are similar to what we had noticed when we had the facilities, even though they were working to correct some of these. Please send us more information. We sent more information. They came back and said that still isn't enough. We'll talk to you about it, but, you know, we just don't think any

Page 959

JOHN LEASE - DIRECT

of these issues or amounts you're seeking for indemnification are valid.

That pretty much continued on from that point. Every time we filed a notice, every time we filed a claim it was rejected for variety of reasons. Case in point for the investigations, they basically, the main focus was well investigations aren't covered under the agreement. So that doesn't count.

For the noncompliance we discovered and reported they came back and said you haven't shown us you received a notice of violation from any agency in any jurisdiction. Which wasn't a requirement of the agreement.

So this continued on through four years. I believe I counted, before I came to this testimony, over 80 letters that I had sent to Fairchild in every case it came back and said we aren't going to cover this. It is either not covered under the agreement or we don't think it is an environmental condition therefore it is not reimbursable. Based on that exposure over the four years to the interchange between the companies, my sense is they have no intention of

Page 960

JOHN LEASE- CROSS

paying for any of this work that was done.

Q. Thank you.

MR. CHESLER: Your Honor, I have no further questions at this point.

MR. ZUROFSKY: Just to handle a little housekeeping. It is four o'clock. I am happy to start. We talked about Mr. Rutschmann carrying on a little into the evening. That will not happen. I think we will still be working with Mr. Lease when we break today.

MR. CHESLER: We will hold him over in New York until tomorrow.

CROSS-EXAMINATION BY MR. ZUROFSKY:

Q. Mr. Lease, good afternoon. Let me first start with the topic of your chart that you spent some time going over with Mr. Chesler in your book. It is Exhibits 40 and 41. Or tabs 40 and 41, I should say.

You indicated, I believe to Mr. Chesler there was about 10 percent, you said were not included in the total there; right?

A. 10 percent of the cost, yes.

Q. The total costs, now if we turn back in that same book to the December 19 letter

Page 961

JOHN LEASE- CROSS

that you sent is tab 38.

Look at the last page of that exhibit. Do you see that at the end of Exhibit 38 the total is 16,385,000?

A. Yes.

Q. The math as I did it on Exhibit 40 totals up to 14,616,000. We can get a calculator out. Does that sound about right to you?

A. That represents, what 90 percent?

Q. That is a little less than 90 percent. Difference of 1.768 million. Does that sound about right to you, the number not included in the chart?

A. 10 percent, that is about right.

Q. It is a little more than 10 percent. I want to ask you first off which items on the chart on 38 are not included in the chart on 40?

A. I would have to go back and look in more detail. I don't know those offhand.

Q. Maybe what we will do, we will be spending a lot of time with the chart on 38, as we go through it you can tell me which ones if

72 (Pages 958 to 961)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 962

1 JOHN LEASE- CROSS  
 2 they come to mind. Okay.  
 3 A. I don't think I can accurately tell  
 4 you every one.  
 5 Q. Give it your best shot. Okay. You  
 6 just spoke at some length about notice that you  
 7 think you provided to Fairchild over the four  
 8 years you been working in your current position;  
 9 right?  
 10 Now the agreement provides  
 11 Fairchild with more than just the right to have  
 12 notice of a condition; correct, sir?  
 13 A. Yes.  
 14 Q. Let's take a look at the agreement  
 15 just so we all have it.  
 16 MR. CHESLER: Your Honor, if you  
 17 have the Holloway binder up there, it is the  
 18 first exhibit in the Holloway binder.  
 19 Q. Turn to page 83, please, sir. I am  
 20 looking at section 11.6 C, sir.  
 21 A. C?  
 22 Q. Yes. Do you see it there?  
 23 A. Okay.  
 24 Q. The first line "Prior to the  
 25 closing, sellers and buyers will each designate

Page 963

1 JOHN LEASE- CROSS  
 2 a representative to receive information and  
 3 consult with the other with respect to Fasteners  
 4 environmental liabilities." Do you see that?  
 5 A. Yes.  
 6 Q. The references section 5.3?  
 7 THE ARBITRATOR: What page are you  
 8 on?  
 9 MR. ZUROFSKY: Sorry, your Honor,  
 10 page 83, Arabic number but FC 2279.  
 11 Q. Do you see that, Mr. Lease?  
 12 THE ARBITRATOR: Wait, page 83 of  
 13 the agreement?  
 14 MR. ZUROFSKY: Yes, sir.  
 15 THE ARBITRATOR: I am using the  
 16 copy from Mr. Chesler's opening statement  
 17 because it is more legible than the photostat  
 18 you gave me. There is a different page number.  
 19 I think it is 2809. Because it came from  
 20 another marking, I guess. In any event, page  
 21 83.  
 22 MR. ZUROFSKY: It should be  
 23 section 11.6 C. It is on the screen. We will  
 24 blow it up on the screen for your Honor as well.  
 25 Q. Do you have it, Mr. Lease?

Page 964

1 JOHN LEASE- CROSS  
 2 A. Yes.  
 3 Q. "Prior to the closing the sellers  
 4 and the buyers, the buyer will each designate a  
 5 representative to receive information and  
 6 consult with the other with respect to Fasteners  
 7 Environmental Liabilities." As I say it  
 8 references section 5.3. Do you see that, sir?  
 9 A. Yes, I do.  
 10 Q. Do you read and understand that to  
 11 mean Fairchild had the right to consult with  
 12 Alcoa regarding Fasteners Environmental  
 13 Liabilities?  
 14 A. Yes, I believe that's true.  
 15 Q. Let's move down a couple of lines,  
 16 now I am going down to probably easier to count  
 17 up from the bottom, eight lines. It says there  
 18 "The buyer will select consultants and  
 19 contractors to implement such remedial actions  
 20 (Who shall be reasonably acceptable to parent)."  
 21 Let me pause there. You understand parent to be  
 22 Fairchild; right, sir?  
 23 A. If you say so.  
 24 Q. I will represent to you it is a  
 25 defined term parent refers to Fairchild?

Page 965

1 JOHN LEASE- CROSS  
 2 A. Okay.  
 3 Q. "And will also provide the seller's  
 4 representative and its environmental consultants  
 5 with copies of all reports, analytical data,  
 6 correspondence, directives, orders and  
 7 documents, submitted to or received by the buyer  
 8 from any government entity in connection with  
 9 the remedial action and other nonprivileged  
 10 documents created or received by or on behalf of  
 11 the buyer in connection with the remedial  
 12 action." Do you see that, sir?  
 13 A. I see that.  
 14 Q. There is two things I want to pause  
 15 on and talk about there. Does that tell you  
 16 Fairchild had the right to be informed of and  
 17 determined to be reasonably acceptable any  
 18 consultants that Alcoa would use in connection  
 19 with remedial actions?  
 20 MR. CHESLER: Excuse me, your  
 21 Honor, may I have one point of clarification for  
 22 the record. Obviously counsel can question the  
 23 witness about the agreement. I want it to be  
 24 clear this is a nonlawyer being asked about a  
 25 legal document which ultimately is to be

73 (Pages 962 to 965)

Page 966

JOHN LEASE- CROSS

construed as a matter of law by the court.  
Therefore any questions are only for the lay person's opinion about what provisions mean. They are not in fact legal interpretation of the contract.

MR. ZUROFSKY: I will just note before agreeing to that the last question Mr. Chesler asked, he asked Mr. Lease did he think he provided notice to Fairchild. These are the provisions to which the contract applies. I want to understand his understanding of the term.

THE ARBITRATOR: We understand all of that.

MR. CHESLER: I don't think we differ. I just want the record to be clear it is his understanding, and not the legal interpretation.

Q. Do you understand, Mr. Lease, the first part of the sentence I read to you to be saying Fairchild had the right to be informed of and to find reasonably acceptable consultants that Alcoa chose to work on remedial actions?

A. Well, as Mr. Chesler noted, I am

Page 967

JOHN LEASE- CROSS

not a lawyer. As I just generally read this the term "remedial actions" refers to actions related to CERCLA is that right? I'm asking you.

Q. We can go look at it, whatever that defined term is, they had the right, focusing on the consulting word, the word "consultants," if Alcoa is taking something defined as a remedial action, however defined, Alcoa is using consultants, does Fairchild have the right to know about it and find those consultants to be reasonably acceptable?

A. It basically says, yes, provide Fairchild the opportunity to comment on the consultants and contractors that are reasonably acceptable. And provide reports to the parent, I guess is the proper term.

Q. Not just reports though, is it, sir, it says "and will also provide the sellers' representative and its environmental consultants with copies of all reports, analytical data, correspondence, directives, orders and documents submitted to or received by the buyer from any government entity in connection with remedial

Page 968

JOHN LEASE- CROSS

action and other nonprivileged documents created or received by or on behalf of the buyer," that's Alcoa, "in connection with remedial action." It is not just reports right, it is a lot of documents we are talking about?

A. Okay.

Q. You agree with that?

A. That is what it says.

Q. Let's look at the next sentence

"The buyer shall afford the sellers a reasonable opportunity to comment on the buyer's proposed response to a Fasteners environmental condition and buyer shall not unreasonably refuse to incorporate the seller's comments."

Do you see that, sir?

A. I do.

Q. What do you understand that to mean?

A. I understand that to mean Fairchild has the right comments on reports generated or information provided to them related to remedial action.

Q. We will get into what you told me about this at your deposition, Mr. Chesler when

Page 969

JOHN LEASE- CROSS

he talked with you was talking about scopes of work, do you recall that?

A. Yes.

Q. When he is defining scope of work he asked you scope of work means this is what we are going to do, do you recall that?

A. Yes.

Q. You said that sounds right to you?

A. Basically, yes.

Q. When we look at the term "proposed response" here in that sentence do you understand proposed response to also mean hey this is what we are going to do, a proposed response?

A. Basically, yes.

Q. This is the action we are going to take?

A. Pardon?

Q. This is the action we are going to take?

A. Okay.

Q. You understand that Fairchild had the right to comment on that proposed response pursuant to this provision of the agreement;

74 (Pages 966 to 969)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 970

1 JOHN LEASE- CROSS  
 2 correct?  
 3 A. Yes.  
 4 Q. In order to comment on proposed  
 5 response you need to know about proposed  
 6 response in the first place; right?  
 7 A. Yes.  
 8 Q. That is what I want to spend some  
 9 time talking about, Mr. Lease, whether or not  
 10 Fairchild knew about Alcoa's proposed response  
 11 in connection with some of the claims we are  
 12 going to go through in tab 38. Okay. Let's  
 13 first start with the document page -- tab 36 of  
 14 your binder.  
 15 Let's be clear about something  
 16 before we go on. At your deposition I believe  
 17 you told me you thought the Fairchild's right to  
 18 comment on proposed response only extended to  
 19 proposed response with respect to government  
 20 actions. Do you recall that testimony?  
 21 A. Yes.  
 22 Q. Is that your position?  
 23 A. No, as you recall we were bouncing  
 24 around in the agreement quite a bit in that  
 25 deposition. I think I became confused regarding

Page 971

1 JOHN LEASE- CROSS  
 2 what was covered in different sections.  
 3 Q. Let me make sure I have it clear,  
 4 because we did go over if you recall at your  
 5 deposition some documents from the 2002, 2003  
 6 time frame. I asked you if your position on  
 7 that issue had changed over time. You said yes  
 8 it had. Do you recall that?  
 9 A. Vaguely. I don't recall the  
 10 specifics.  
 11 Q. Is it worth taking a look at it  
 12 just a minute. I want to make sure we are  
 13 talking about the same thing. Let's turn, Mr.  
 14 Lease, to page 34 of that deposition. At the  
 15 bottom there I asked you line 22 "so is it your  
 16 understanding at this time" the time just so you  
 17 know is referring back to an email from 2003, I  
 18 believe, "That Alcoa was required to provide  
 19 Fairchild with notice of activities, in this  
 20 case Phase IIs that were to be performed in the  
 21 future."  
 22 THE ARBITRATOR: You are on  
 23 page 34.  
 24 MR. ZUROFSKY: Bottom of page 34,  
 25 your Honor.

Page 972

1 JOHN LEASE- CROSS  
 2 Q. Do you see that, Mr. Lease?  
 3 A. Yes, I do.  
 4 Q. You said "At this point in time"  
 5 again referring to an email, I can put it in  
 6 front of you, it is an email from 2002,  
 7 actually, I believe end of 2002, "At this point  
 8 in time that was my understanding."  
 9 A. What time frame are we talking  
 10 about here?  
 11 Q. The time frame of the document we  
 12 are talking about here is 2002. It is actually  
 13 in your book, if you want to take a look at it.  
 14 The document we were talking about is the  
 15 document in which you said you satisfied the  
 16 requirement to provide Mike Hodge with scopes of  
 17 work. Do you remember that document?  
 18 A. Okay.  
 19 MR. ZUROFSKY: Do you happen to  
 20 know which tab it is, Evan, you went through it  
 21 a little earlier? It is tab 4 it looks like.  
 22 MR. CHESLER: I thought 3 or 4.  
 23 Q. That is the Exhibit that is being  
 24 referred to in this portion of deposition.  
 25 November of 2002. I asked you is that your

Page 973

1 JOHN LEASE- CROSS  
 2 understanding at the time Alcoa was required to  
 3 provide Fairchild with notice of activities in  
 4 this case Phase II that were to be performed in  
 5 the future. You said at this point in time that  
 6 was my understanding.  
 7 A. Correct.  
 8 Q. I asked you "How does your  
 9 understanding differ now with respect to Alcoa's  
 10 requirement to notify Fairchild of actions to be  
 11 taken in the future?"  
 12 You said "Well, as I read the  
 13 agreement here today, and in subsequent to this  
 14 meeting the requirement to provide them with  
 15 information in advance was limited to activities  
 16 associated with governmental interactions  
 17 related through remedial activities." Do you  
 18 recall that?  
 19 A. Yes.  
 20 Q. That statement at the deposition  
 21 you're saying is no longer your belief?  
 22 A. That is no longer my understanding,  
 23 correct.  
 24 Q. You understand now that Fairchild  
 25 had the right to comment on all proposed actions

75 (Pages 970 to 973)

Page 974

JOHN LEASE- CROSS

that Alcoa was taking that could qualify as a Fasteners environmental liability; right?

A. Yes.

Q. With that in mind now that we have that cleared up, let's move to the chart. The first thing I want to talk about on the chart are these asterisk. Mr. Chesler pointed you to two asterisk items from City of Industry. Do you recall that on tab 36 of the binder? Do you recall that?

THE ARBITRATOR: 36 or 38?

MR. ZUROFSKY: 36. 38 is the master chart that comes later. 36 is the first one with the asterisks.

A. Okay. I'm on the chart.

Q. Mr. Chesler pointed you to confined space compliance entry at 36010-009; right?

A. That's correct.

Q. He pointed you to mobile equipment compliance. Do you remember that at 011?

A. What was the number.

Q. 36010-011. Two below.

A. Okay.

Q. He pointed you back to tab 20 in

Page 975

JOHN LEASE- CROSS

the binder. Do you remember that?

A. Yes.

Q. Tab 20 is a letter from you to Mike Hodge; right?

A. Yes, it is.

Q. The letter says, does it not, sir, the attachment Mr. Chesler pointed you to, the chart on 235 is for costs already incurred; right? So look at the mobile equipment compliance there. On 235, 36010, mobile equipment compliance. Do you remember that?

A. I see it.

Q. Mr. Chesler asked you well you are really notifying them twice; right? You said yes, do you recall that?

A. Yes.

Q. Here you are notifying Fairchild, are you not, of costs already incurred in connection with that project; right?

A. These were costs incurred but the notice that this was an environmental condition had been provided earlier.

Q. You're going to tell me the

mobile equipment compliance is provided in the

Page 976

JOHN LEASE- CROSS

Phase Is; is that right?

A. Phase Is and the general approaches that we provided to Fairchild for corrective actions related to compliance issues in our notice letters.

Q. I am not sure what you mean by general approach you provided to Fairchild. What does that mean?

A. Well, if you recall the letters we provided for the four major facilities that we conducted gap analyses for. The major categories that we found there included mobile equipment compliance.

Q. There is no letter for City of Industry in those four letters, correct, the gap analysis letters?

A. No. There is no specific letter for City of Industry. However, as I noted in my discussion with Mr. Chesler, these issues related to safety and health compliance as well as environmental compliance were common across the facilities.

The approach that we took as described in the gap analysis letters basically

Page 977

JOHN LEASE- CROSS

said we found a non-compliance here. We are going to conduct a study to determine what needs to be done to fix the problem and we are going to fix the problem.

Q. Mr. Lease, there is no mention in the Phase I for City of Industry about mobile equipment compliance; is there?

A. I can't recall specifically.

Q. I am going to ask you a series of questions that sort of follow that for a lot of these items. We can handle it how you like. We can go to the Phase Is, you can look at them or tell me you don't recall. Let the documents speak for themselves. I want to make sure we covered all these. Because I know you're saying Phase Is mention these type of items and they don't, sir. If you want to look at them you can. I am going to ask you these questions. Okay?

A. Let's go.

Q. Mobile equipment compliance, do you – let's get the list we want to establish before we go to Phase I. The next one – before I move on, what was Alcoa's proposed response to mobile equipment compliance issue?

76 (Pages 974 to 977)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 978

JOHN LEASE- CROSS

A. Basically the program areas in mobile equipment were lacking components that were in compliance with OSHA. So based on the analysis that was done for each individual program the appropriate corrective actions are put into place to bring that particular program area up to OSHA standard.

Q. When did Alcoa propose that response to Fairchild, for City of Industry?

A. As I mentioned, it was part of the overall gap analysis reporting process we followed through.

THE ARBITRATOR: What are you talking about mobile equipment? What are you talking about?

THE WITNESS: Mobile equipment is equipment on the site such as forklifts, Cranes that move.

THE ARBITRATOR: What is the noncompliance you're talking about?

THE WITNESS: I am not a safety expert, but I will try to explain to the best I can. OSHA set certain requirements in their regulations related to aspects of the mobile

Page 980

JOHN LEASE- CROSS

into compliance.

Q. Your testimony, Mr. Lease, Alcoa's proposed response to that situation at the City of Industry can be found in letters related to Torrance, Fullerton, Toulouse and St. Cosme; right?

A. Basically the approach was to conduct a review of each area where we identified significant compliance issues. Basically the nine areas we're looking at. And to fix the problem. It is a very common approach in industry, you don't create a work plan, scope of work to effect the \$2,400 repair.

Q. Where did you tell Fairchild you were going to do that we will move to bigger numbers in a minute?

A. I have to say our assessments of the Fairchild facilities were that the individual plants knew what the issues were, Fairchild knew what the issues were and we carried out the corrective actions in the most effective way possible.

Q. Mr. Lease, my question where and when and in what document did you tell Fairchild

Page 979

JOHN LEASE- CROSS

equipment such as inspections, certain types of -- getting outside of my area here, but in essence there are a list of compliance requirements that must be met under OSHA standards for variety of industrial practices such as mobile equipment.

So when we talk about deficiencies in the program, our analysis, based on our gap analysis relative to compliance would identify areas where they were noncompliant. Those areas would need to be corrected to bring the program into compliance.

THE ARBITRATOR: I guess my question what did you spend 2487 doing for that item, the item we are discussing, what would you have spend \$2400 on a piece of mobile equipment to do? It doesn't work, I mean what is the --

THE WITNESS: It could have been for some guarding on the piece of equipment. It could have been to replace piece of the equipment that was defective such as on a crane which is moving, so it is a piece of mobile equipment. There would be corrective action for that specific piece of equipment to bring it

Page 981

JOHN LEASE- CROSS

you were going -- that was your proposed response for mobile equipment?

A. For each specific project.

Q. Yes?

A. We did not go to that level of detail.

Q. With respect to proposed responses?

A. Not all of them, no.

Q. Let's continue down the list. Next starred item is earthquake hazard reduction for 76,000?

THE ARBITRATOR: Where are you?

MR. ZUROFSKY: Back on tab 36 your Honor going through that list that has asterisk under project number heading if you go down to 36010-014 it says earthquake hazard reduction 76,000.

A. Which tab?

Q. Tab 36, first page of the chart.

THE ARBITRATOR: The fact it has a single asterisk indicates what?

Q. Let's clarify that. That is a very good point. Go back to the cover letter, Mr. Lease on tab 36.

77 (Pages 978 to 981,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 982

1 JOHN LEASE- CROSS

2 A. 14?

3 Q. Judge Stapleton asked a question  
4 about what the single asterisk means, I want to  
5 be sure we are all clear about that. Your  
6 Honor, Mr. Lease says it in the cover letter of  
7 tab 36. He says --8 THE ARBITRATOR: He just says they  
9 haven't been the subject of prior notice.  
10 Either asterisk. Double asterisk they haven't  
11 incurred expenses.12 Q. Aren't you here saying these have  
13 not been the subject of prior notice, any of  
14 these items?15 A. I know in this particular case,  
16 number 14 --17 Q. We are back on the cover letter  
18 answering Judge Stapleton's question.19 THE ARBITRATOR: In general they  
20 were not subject of prior notice?21 THE WITNESS: Prior notice of  
22 liabilities of expenses.23 Q. You don't say that here, do you,  
24 you say have not been the subject of prior  
25 notice to section 11.6 of the Acquisition

Page 983

1 JOHN LEASE- CROSS

2 Agreement; right, Mr. Lease; right? Is that what  
3 you say in the letter?

4 A. Pardon?

5 Q. Does it not say in the letter some  
6 of the items on this chart identified with an  
7 asterisk or double asterisk have not been the  
8 subject of prior notice pursuant to section 11.6  
9 of the Acquisition Agreement period. You don't  
10 say notice of liability; do you?11 A. That is inherent in this chart. It  
12 is a liability chart.13 Q. In other words, it is for costs  
14 already incurred?15 A. Costs incurred that we had not  
16 reported to Fairchild at the time.

17 Q. For work already done?

18 THE ARBITRATOR: Some of the  
19 double asterisk is costs not yet incurred  
20 according to this letter?

21 MR. ZUROFSKY: Right.

22 THE ARBITRATOR: Either asterisk,  
23 single or double means it was not subject to  
24 prior notice pursuant to section 11.6, that is  
25 what we're talking about?

Page 984

1 JOHN LEASE- CROSS

2 THE WITNESS: In terms of  
3 liability notification, yes.4 THE ARBITRATOR: All it says  
5 subject to prior notice pursuant to section 11.6  
6 of the Acquisition Agreement.7 THE WITNESS: It is probably  
8 unfortunate wording in this letter. The charts  
9 reflect liabilities that we had incurred up to  
10 this point.11 THE ARBITRATOR: What do you mean  
12 by liabilities?

13 THE WITNESS: Actual money spent.

14 THE ARBITRATOR: The double  
15 asterisk says you have not incurred the expense  
16 in connection --17 THE WITNESS: That's correct.  
18 These were projects we anticipated spending  
19 money for in the future so we included them.20 Q. With respect to those double  
21 asterisk projects, you were providing what kind  
22 of notice to Fairchild?

23 A. Pardon?

24 Q. With respect to the double asterisk  
25 items, you were providing what kind of notice to

Page 985

1 JOHN LEASE- CROSS

2 Fairchild?

3 A. Well, I can't say that each  
4 individual project was noticed to Fairchild with  
5 double asterisk.6 Q. Hold on. Let's work through this.  
7 You told Judge Stapleton the double asterisk  
8 mean no expenses had been incurred yet; right?

9 A. That's correct.

10 Q. You said your interpretation of the  
11 word notice there, no prior notice of liability;  
12 right?

13 A. That's correct.

14 Q. But there is no liability with  
15 respect to items for which you have not yet  
16 incurred any expenses; right?

17 A. Potential liability.

18 Q. Doesn't say that either, right,  
19 doesn't say liability or potential liability;  
20 does it?21 A. We are getting wrapped around the  
22 axle here on this chart. In essence what we  
23 tried to convey is where the asterisk was  
24 included next to the project, it represents the  
25 first notice of liability.

78 (Pages 982 to 985)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 986

1 JOHN LEASE- CROSS  
 2 THE ARBITRATOR: When you say  
 3 liability, what do you mean by that?  
 4 THE WITNESS: Liability, expended  
 5 cost, expended funds we had spent for the  
 6 project.  
 7 THE ARBITRATOR: You are saying  
 8 you gave prior notice of this problem in this  
 9 particular location?  
 10 THE WITNESS: As I said earlier,  
 11 I think each individual project is not the  
 12 subject of notice to Fairchild. We provided  
 13 notice of issues at the facilities.  
 14 THE ARBITRATOR: Generic issues at  
 15 any facilities is that what you're saying.  
 16 THE WITNESS: Basically, yes.  
 17 Q. Let's talk about that a second.  
 18 This chart is not done by general issues, is it  
 19 it is done by line items of particular project;  
 20 right? Right?  
 21 A. I think that's your opinion.  
 22 Q. Let's turn to the chart. What is  
 23 the chart listing? In the chart, these are line  
 24 items, particular expenses projects; right?  
 25 A. These are projects.

Page 987

1 JOHN LEASE- CROSS  
 2 Q. They have project numbers; right?  
 3 A. Pardon?  
 4 Q. They have project numbers assigned  
 5 by Alcoa; right?  
 6 A. That's correct.  
 7 Q. Distinct one for each project?  
 8 A. Yes.  
 9 Q. So when you say what you're  
 10 providing notice of here, you're not saying you  
 11 are providing general subject areas, you're  
 12 talking about particular projects; right?  
 13 A. Under broader heading as we  
 14 discussed earlier with Mr. Chesler.  
 15 Q. Which heading with Mr. Chesler you  
 16 discussed?  
 17 A. Mobile equipment was under mobile  
 18 equipment, machine guarding was under equipment,  
 19 I forget the exact line item in the large chart.  
 20 Equipment safety compliance.  
 21 Q. Not in the chart you sent to  
 22 Fairchild; was it? Not in the chart you sent to  
 23 Fairchild in connection with this letter in  
 24 May -- excuse me July 2005. There is no  
 25 headings like we saw in the chart at tab 40 and

Page 988

1 JOHN LEASE- CROSS  
 2 41 of your binder; were there?  
 3 A. We are talking about notice.  
 4 Notice of the issue as it relates to that  
 5 category.  
 6 Q. We have three types, let's make  
 7 sure we are talking the same language. We  
 8 really have three types of information we are  
 9 talking about so far today, don't we, we have  
 10 notice of a potential problem, notice of a  
 11 condition; right? Are you with me?  
 12 A. Notice of an environmental  
 13 condition?  
 14 Q. Notice of a Fasteners Environmental  
 15 Condition, that is called for by 11.6 D of the  
 16 agreement. Do you remember that?  
 17 A. No.  
 18 Q. Let's put it up 11.6 D of the  
 19 agreement which is found on page 84 of the  
 20 agreement if you want to use the hard copy.  
 21 11.6 D says "The buyer shall inform any of the  
 22 sellers," buyer being Alcoa, sellers being  
 23 Fairchild, "promptly in writing of any Fasteners  
 24 Environmental Condition or environmental action  
 25 in respect of which the sellers may have an

Page 989

1 JOHN LEASE- CROSS  
 2 indemnification obligation under this section  
 3 11.6." Do you see that?  
 4 A. Yes, I see it.  
 5 Q. That is the first type of notice I  
 6 would like to discuss, which is notice of a  
 7 Fasteners environmental condition; right?  
 8 A. Okay.  
 9 Q. Then we talked a little earlier, I  
 10 think you said you agree with me, that Fairchild  
 11 was also had the right to consult and comment on  
 12 proposed responses to those conditions; right?  
 13 A. Yes.  
 14 Q. We agreed in order to comment and  
 15 consult on those proposed responses one needs to  
 16 know what that proposed response is; right?  
 17 A. Yes.  
 18 Q. So those are two different things;  
 19 right?  
 20 A. The response to a condition?  
 21 Q. Yes. Condition and response to it.  
 22 A. Yes.  
 23 Q. The third type is notice, as you've  
 24 called it with your Honor, is of liability;  
 25 right?

79 (Pages 986 to 989)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 990

1 JOHN LEASE- CROSS  
 2 A. Correct.  
 3 Q. That is notice when Alcoa is saying  
 4 here is the bill, Fairchild, pay us; right?  
 5 A. Right.  
 6 Q. Those three, keep those three  
 7 categories in mind as we work our way through  
 8 these materials. Okay? Going back to the cover  
 9 page of tab 36. You are saying here some of the  
 10 items on this chart identified with an asterisk  
 11 or double asterisk have not been the subject of  
 12 prior notice pursuant to section 11.6 of the  
 13 Acquisition Agreement.  
 14 You, I believe, have now said the  
 15 notice you're referring there to is notice of  
 16 liability; right?  
 17 A. That's what I have said, yes.  
 18 Q. Is it your testimony and belief you  
 19 had those items with the asterisks were also  
 20 Fairchild was provided notice of any other two  
 21 categories for those items?  
 22 A. Fairchild had been provided notice?  
 23 Q. Yes. By Alcoa.  
 24 A. I believe that's the case, yes.  
 25 Q. On what basis do you say that's the

Page 991

1 JOHN LEASE- CROSS  
 2 case?  
 3 A. If we take the mobile equipment  
 4 example for an example, we provided notice to  
 5 Fairchild through a variety of documents. The  
 6 first is the Phase Is reports. The second is  
 7 the gap analysis reports.  
 8 These reports basically identified  
 9 Fasteners Environmental Conditions to Fairchild.  
 10 Okay. Included in those reports to Fairchild,  
 11 especially in the gap analysis reports there was  
 12 proposed action or corrective action that was  
 13 included which was then provided to Fairchild.  
 14 Their comment on those actions was  
 15 basically we disagree their Fasteners  
 16 Environmental Conditions, we dispute that these  
 17 are Fasteners Environmental Conditions and we  
 18 object to release of the escrow funds to pay for  
 19 this.  
 20 Q. Lets be clear, you say that, we can  
 21 talk about any of these, we will talk about  
 22 mobile equipment at City of Industry. You say  
 23 that Fairchild was on notice of the condition,  
 24 i.e., the problem with the mobile equipment  
 25 there at City of Industry for both Phase I and

Page 992

1 JOHN LEASE- CROSS  
 2 gap analysis that were provided. You never  
 3 provided the gap analysis there were summary  
 4 charts of gap analysis; right, sir?  
 5 A. There was gap analysis provided  
 6 later for City of Industry that included this  
 7 item.  
 8 Q. Later?  
 9 A. Later.  
 10 Q. After costs were incurred; right?  
 11 A. After the costs were incurred but,  
 12 as I said before, the environmental condition,  
 13 deficiencies in mobile equipment had been  
 14 noticed to Fairchild.  
 15 Q. For City of Industry where?  
 16 A. It was a general environmental  
 17 condition that existed across the company at  
 18 that time.  
 19 Q. But you wrote letters about four  
 20 specific facilities right, Torrance, Fullerton  
 21 -- excuse me, St. Cosme and Toulouse; right?  
 22 A. That's right.  
 23 Q. You didn't write a letter about  
 24 City of Industry?  
 25 A. The condition itself, as I

Page 993

1 JOHN LEASE- CROSS  
 2 mentioned to Mr. Chesler, the rationale for  
 3 doing the four sites initially within the gap  
 4 analysis process was to identify the scope of  
 5 issues that existed within Fairchild.  
 6 Q. You didn't tell Fairchild that was  
 7 the purpose of these just doing these four  
 8 facilities, right, you just sent them letters  
 9 about four facility; right?  
 10 A. We discussed the approach, rapid  
 11 integration approach with Mr. Hodge our meeting  
 12 in Dulles. We repeated that in our plant visits  
 13 with Mr. Hodge at Torrance, Fullerton, Stoughton  
 14 and City of Industry. So we in our view had  
 15 provided general, well not general, we provided  
 16 notice to the company that these issues were  
 17 found to be in noncompliance and we were going  
 18 to address them in a similar way.  
 19 Q. Let's talk about one of those.  
 20 Let's look at one of those letters and what  
 21 happens with one of those letters. The letters  
 22 for the four facilities. Let's look at the  
 23 Fullerton letter. The Fullerton letter is in  
 24 bulk Exhibit C. I am not sure it is in your  
 25 binder or not.

80 (Pages 990 to 993)

MERRILL LEGAL SOLUTIONS  
 (800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 994

1 JOHN LEASE- CROSS  
 2 MR. CHESLER: Fullerton compliance  
 3 letter?  
 4 MR. ZUROFSKY: June 13 letter from  
 5 Mr. Lease to Hodge.  
 6 MR. CHESLER: Tab 14.  
 7 A. Okay.  
 8 Q. This is one of the letters you're  
 9 talking about you say told Fairchild fulfilled  
 10 the first two buckets of notice we established  
 11 earlier of the three; right?  
 12 A. Right.  
 13 Q. You say not just extended to  
 14 Fullerton, but to all 16 facilities for these  
 15 issues; right?  
 16 A. Fullerton plus the other three  
 17 facilities, I think capture the scope and  
 18 breadth of the issues we identified.  
 19 Q. Let's look at the Fullerton letter.  
 20 You provided a chart which you went through with  
 21 Mr. Chesler at some length. I want to look at  
 22 machine guarding here at Fullerton. Before I do  
 23 that I want to nail one thing down. That is the  
 24 following: You say you got a response from Mr.  
 25 Miller on this for these letters; correct?

Page 995

1 JOHN LEASE- CROSS  
 2 A. Yes.  
 3 Q. What did Mr. Miller say? You can  
 4 look at it.  
 5 MR. ZUROFSKY: Tab 15.  
 6 MR. CHESLER: That is response on  
 7 Fullerton.  
 8 MR. ZUROFSKY: We will get to that  
 9 in a minute, too.  
 10 Q. Tab 15 captured Fullerton, Mr.  
 11 Miller writes back to you; right?  
 12 A. Yes.  
 13 Q. He says "we've received and  
 14 reviewed your letter." He says "based upon our  
 15 initial review of the issues noted in your  
 16 letter, Fairchild hereby disputes Fairchild's  
 17 liability for costs associated with the  
 18 corrective actions listed in the table attached  
 19 to your letter." Right?  
 20 I want to go down to the third  
 21 paragraph where Mr. Miller says "Nevertheless,  
 22 pursuant to section 11.7 of the Acquisition  
 23 Agreement, we are willing to discuss this matter  
 24 further with you." Do you see that, sir?  
 25 A. I see that.

Page 996

1 JOHN LEASE- CROSS  
 2 Q. Does he mention mediation there,  
 3 does he use the word mediation?  
 4 A. Mediation?  
 5 Q. Yes.  
 6 A. I believe it is mentioned in  
 7 section 11.7.  
 8 Q. Does he -- well, does he mention  
 9 the word mediation in this letter?  
 10 A. In his text, no.  
 11 Q. Does he mention the word  
 12 arbitration in this text?  
 13 A. No.  
 14 Q. He mentions discussions, right,  
 15 discuss this matter further with you; right?  
 16 A. Yes.  
 17 Q. Let's pull up 11.7 of the  
 18 agreement. Found on page 86 if you want to look  
 19 at the hard copy. It says, I will read it for  
 20 the record "If a dispute arises in connection  
 21 with determining validity or amounts of a claim  
 22 for indemnification," I will skip "If the  
 23 dispute cannot be settled through direct  
 24 discussions between representatives of the  
 25 parent and representative of the buyer" then it

Page 997

1 JOHN LEASE- CROSS  
 2 goes on to talk about mediation and arbitration.  
 3 Do you think Mr. Miller is  
 4 referring to discussions referenced here in  
 5 section 11.7 to negotiate these things -- sorry,  
 6 to resolve these things through direct  
 7 discussions?  
 8 A. I don't know what his true intent  
 9 was, frankly.  
 10 Q. He doesn't mention anything other  
 11 than discussion. Let's go forward. So he asks  
 12 you next sentence of the letter, "in order that  
 13 we may do so effectively, Mr. Miller asks for,  
 14 please provide us with specific and complete  
 15 background documentation supporting the items  
 16 that estimated costs summarized in the table.  
 17 Then he says "such documentation should include  
 18 copies of any assessments, reports, legal  
 19 analyses or cost analyses prepared by or for  
 20 Alcoa and any other documentation which support  
 21 the various findings as listed in the tables  
 22 included with your letter of June 13." Do you  
 23 see that request, Mr. Lease?  
 24 A. Yes, I do.  
 25 Q. Did Alcoa respond to that request?

81 (Pages 994 to 997)

Page 998

JOHN LEASE- CROSS

A. We did not provide any further documentation because, in essence, what we provided in this table was sufficient to demonstrate the environmental condition and the response.

Q. Let's turn now, I don't think your counsel put this in front of you, we certainly will. My question, by the way, did Alcoa at all respond to Mr. Miller's letter?

A. I answered the question.

Q. You said Alcoa did not because you thought there was sufficient information; right?

A. This issue was well described in the table.

MR. ZUROFSKY: We put together a separate binder, there is more in here than not. We will try to cross-reference whenever we can. We promise not to undo the duplications for you. Mr. Chesler put in front of you some of the correspondence but there, as you see two shelves there, there are some others we want to put in front of you as well we will cross-reference it later if that makes sense.

Q. What I want to look at is under tab

Page 999

JOHN LEASE- CROSS

Fullerton, you see tabs there relating to the different sites in the binder I just handed you.

A. Okay.

Q. Under Fullerton there are letters separated by yellow sheets.

A. First letter I have in Fullerton tab is City of Industry.

Q. It relates to Fullerton, City of Industry, Temple Avenue and Fullerton.

A. Okay.

Q. Go past that letter and the next letter, the next letter by the way is your June 13 letter; do you see that there? Right?

A. Pardon.

Q. Second letter in Fullerton is your June 13 letter the EHS noncompliance letter that had the chart attached to it; right?

A. Okay.

Q. Are you with me?

A. Yes. I see it.

Q. Then go forward another letter which relates to oversight cost reimbursement; right?

A. Okay.

Page 1000

JOHN LEASE- CROSS

Q. Then another letter. This is Mr. Miller's letter that we were looking at before; right?

A. Okay.

Q. That we just talked about; right?

A. Okay.

Q. I asked you and pointed you to the language where Mr. Miller requested such documentation should include copies of any assessments, reports, legal analyses or cost analyses prepared by or for Alcoa and any other documentation which support the various findings as listed in the details. Do you recall that?

A. I see it.

Q. I asked you had Alcoa responded to that. You told me there was no need to. It was already known to Fairchild; right?

A. It was known to Fairchild. It was also the issue was well described in this table.

Q. I want you to turn to the next letter in the binder I just put in front of you, a letter, there is a cover letter, cover sheet dated August 13, from Sanford Harvey to Michael Hodge?

Page 1001

JOHN LEASE- CROSS

A. Okay.

Q. Who is Mr. Harvey?

MR. CHESLER: Sorry, August what?

MR. ZUROFSKY: August 13.

MR. CHESLER: Of?

MR. ZUROFSKY: 2003.

MR. CHESLER: Behind the Fullerton tab?

MR. ZUROFSKY: Yes.

Q. Are you with me, Mr. Lease?

THE ARBITRATOR: This is a letter from Mr. Harvey sent to Michael Hodge and addressed to Donald Miller?

MR. ZUROFSKY: Correct, your Honor.

Q. Who is Mr. Harvey, just so we have it?

A. Mr. Harvey is an attorney for Alcoa, works in Pittsburgh.

Q. He had involvement in these environmental issues with the Fasteners Fairchild facilities; right?

A. I wouldn't say that. He was responding in this case specifically to Mr.

82 (Pages 998 to 1001)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1002

1 JOHN LEASE- CROSS  
 2 Miller's position the only way that an  
 3 environmental condition qualified for  
 4 reimbursement was if it resulted from a notice  
 5 of violation.  
 6 Q. We heard some talk about this  
 7 November 8, 2002 meeting with Mr. Hodge, the  
 8 meeting you were at.  
 9 A. On the scopes of work?  
 10 Q. The meeting you talked about with  
 11 Mr. Chesler?  
 12 A. Yes.  
 13 Q. Mr. Harvey was at that meeting too?  
 14 A. Yes.  
 15 Q. Here is Mr. Harvey writing to Mr.  
 16 Miller. I want to draw your attention to the  
 17 second page of Mr. -- before we do that look at  
 18 the title Re line Fullerton, Toulouse, Torrance  
 19 France EHS noncompliance issues. Do you see the  
 20 "Re:" line?  
 21 A. Yes.  
 22 Q. He is referring to three facilities  
 23 for which you provided letters to Fairchild;  
 24 right?  
 25 A. That's correct.

Page 1003

1 JOHN LEASE- CROSS  
 2 Q. Three of the four?  
 3 A. Correct.  
 4 Q. He doesn't say here -- he  
 5 understood that Mr. Miller had written him about  
 6 Fullerton, Torrance and Toulouse, right, he is  
 7 referring to all three?  
 8 A. Right. Three letters from Mr.  
 9 Miller.  
 10 Q. It says in your letters to John  
 11 Lease dated June 27 you disputed Fairchild's  
 12 liability and so on and so forth; right?  
 13 A. Right.  
 14 Q. Turn to the second page where Mr.  
 15 Harvey writes in a paragraph beginning "We  
 16 will."  
 17 A. Okay.  
 18 Q. Remember Mr. Miller asked for  
 19 documentation such as reports, analyses, backup  
 20 studies and all the rest of it; right?  
 21 A. Yes.  
 22 Q. So Mr. Harvey here says "We will  
 23 provide Fairchild with further documentation to  
 24 support the estimates developed for the three  
 25 facilities. Documentation is being compiled for

Page 1004

1 JOHN LEASE- CROSS  
 2 each project."  
 3 Is it your recollection, Mr. Lease,  
 4 there was documentation being compiled at this  
 5 time for those projects?  
 6 A. I have no firsthand knowledge that  
 7 was the case.  
 8 Q. And will consist, this is Mr.  
 9 Harvey, he says "And will consist of such items  
 10 as scopes of work, he says or work, we assume  
 11 scopes of work." Go back to Mr. Chesler's  
 12 definition earlier, scope of work are things  
 13 that say this is what we are going to do; right?  
 14 A. Basically that's right.  
 15 Q. Then it says consultant proposals,  
 16 same thing proposal about what we are going to  
 17 do?  
 18 A. Right.  
 19 Q. Then it says summary reports and  
 20 invoices; right?  
 21 A. Right.  
 22 Q. Then Mr. Harvey says we will  
 23 provide you with this documentation in a timely  
 24 manner once it is complete for your review; do  
 25 you see that there, Mr. Lease?

Page 1005

1 JOHN LEASE- CROSS  
 2 A. Yes, I see it.  
 3 Q. Alcoa never sends that  
 4 documentation to Fairchild regarding those  
 5 projects; did it?  
 6 A. Well, frankly this was Mr. Harvey's  
 7 letter. In the case of these three facilities,  
 8 this documentation he is referencing to the best  
 9 of my knowledge was not available.  
 10 Q. Let's talk about that.  
 11 A. This represents -- this doesn't  
 12 represent official Alcoa response. This  
 13 represent's Sandy's response to Mr. Miller.  
 14 Q. It is on Alcoa letterhead the  
 15 letter, yes?  
 16 A. Yes.  
 17 Q. From Mr. Miller; right? He is  
 18 saying he is responding to Mr. Miller's letter's  
 19 right?  
 20 A. The focus is really to address the  
 21 issue related to notice of violation.  
 22 Q. Mr. Lease says he is responding to  
 23 Mr. Miller's letter; right?  
 24 A. He is responding.  
 25 Q. Mr. Miller's letter included

83 (Pages 1002 to 1005,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1006

1 JOHN LEASE- CROSS  
 2 request for precisely the type of documentation  
 3 he says he will provide in a timely manner?  
 4 A. It requested that. I think Sandy's  
 5 focus in this response was to address the legal  
 6 issue that was involved here.  
 7 Q. Are you saying Mr. Harvey was not  
 8 speaking for Alcoa when he wrote that letter?  
 9 A. I can't say he is speaking for  
 10 Alcoa in this individual clause you pulled out  
 11 of the letter.  
 12 Q. Let's go back to the notice chart  
 13 you provided you say with respect to Fullerton.  
 14 You just, I believe, testified you didn't think  
 15 the additional assessments and information was  
 16 available to provide to Mr. Miller on these  
 17 items. Is that what you said, Mr. Lease?  
 18 A. Pardon me?  
 19 Q. Is that what you said?  
 20 A. This table represented the  
 21 information that we had we felt was sufficient  
 22 to justify the corrective action.  
 23 Q. Not my question, sir. You just  
 24 testified just a couple minutes ago when I said  
 25 to you I was pointing out that language in Mr.

Page 1007

1 JOHN LEASE- CROSS  
 2 Harvey's letter you said, well, I don't think  
 3 that such documentation was available. Do you  
 4 recall that. We can read it back.  
 5 A. Yeah. Based on what I knew at the  
 6 time that was the case.  
 7 Q. He doesn't talk about documentation  
 8 at the time Mr. Harvey says it is being  
 9 finalized and will be provided. Did it  
 10 eventually come to exist?  
 11 A. I don't know how Mr. Harvey would  
 12 know that. He wasn't involved in the technical  
 13 aspects of these projects.  
 14 Q. Let's go back to your letter from  
 15 June 13 which has the chart. You remember I  
 16 want to start talking about machine guarding, do  
 17 you recall that?  
 18 A. Yes.  
 19 Q. Look at the chart, in particular  
 20 back a couple letters page FAIR 5000041. You  
 21 can also refer to it if you like in tab 15 of  
 22 Mr. Chesler's binder. It is in both places.  
 23 However it is easier to do it.  
 24 THE ARBITRATOR: It would be  
 25 easier to stick with the things that are marked.

Page 1008

1 JOHN LEASE- CROSS  
 2 You give us a whole other book now, to find  
 3 anything as you go through is very difficult.  
 4 MR. ZUROFSKY: For anything  
 5 already in Mr. Chesler's binder, obviously I  
 6 didn't know until cross what I will be  
 7 introducing --  
 8 THE ARBITRATOR: Just tell me what  
 9 you want.  
 10 MR. ZUROFSKY: I will work off Mr.  
 11 Chesler's book to the extent they cross over.  
 12 Mr. Chesler's book tab 14. I will only go in  
 13 our book for an item not in Mr. Chesler's book.  
 14 We will provide you later a set of those.  
 15 Q. Tab 14 of Mr. Chesler's book.  
 16 Let's look at the page marked at the bottom fair  
 17 5000041. Do you see that, Mr. Lease?  
 18 A. Yes.  
 19 Q. This is as you say, I think you  
 20 testified you believe satisfies both first  
 21 categories of notice with respect to this  
 22 machine guarding items; right?  
 23 A. Yes. That is our position.  
 24 Q. Not just for Fullerton, you say it  
 25 extends out to the other facilities as well?

Page 1009

1 JOHN LEASE- CROSS  
 2 A. Yes.  
 3 Q. Lets look at this. If you look  
 4 under corrective action here it says "conduct a  
 5 hazard assessment of the equipment at the  
 6 facility subject to the OSHA regulations on  
 7 machine guarding. Use the survey to develop  
 8 equipment-specific machine guarding  
 9 installations and procedures comply with  
 10 regulatory requirements."  
 11 Do you see that there?  
 12 A. I see it.  
 13 Q. The estimated cost there is  
 14 \$58,000, Mr. Lease?  
 15 A. Yes.  
 16 Q. This is what you told Fairchild;  
 17 right?  
 18 A. This is what we sent them.  
 19 Q. \$58,000. I think we just looked at  
 20 a letter from Mr. Harvey in which he said  
 21 documentation is being prepared and will be  
 22 forwarded to you shortly. Do you recall that  
 23 letter?  
 24 A. I recall the letter.  
 25 Q. Did Alcoa perform the assessment

84 (Pages 1006 to 1009)

MERRILL LEGAL SOLUTIONS  
 (800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1010

1 JOHN LEASE- CROSS  
 2 referenced here with respect to Fullerton  
 3 machine guarding?  
 4 A. I believe we did, yes.  
 5 Q. It is a pretty voluminous report;  
 6 right?  
 7 A. I don't know.  
 8 These studies were carried out at  
 9 the plant level. So I didn't see the report or  
 10 survey?  
 11 Q. You were in charge of giving  
 12 information to Fairchild; right?  
 13 A. I was in charge of the transmitting  
 14 what I received to Fairchild.  
 15 Q. As I say, I don't want to create a  
 16 Miracle on 34th Street moment where we start  
 17 bringing in the mailman with all sort of boxes.  
 18 Let's look at this report. One report on  
 19 machine guarding.  
 20 I promise your Honor, we will have  
 21 paralegals come out and bring these for you if  
 22 you need it.  
 23 THE ARBITRATOR: This particular  
 24 entry, \$58,000 is for the study hazard  
 25 assessment of the equipment and facilities

Page 1011

1 JOHN LEASE- CROSS  
 2 subject to OSHA regulations and machine  
 3 guarding. Use the survey to develop  
 4 equipment-specific machine guarding  
 5 installations and procedures to comply with  
 6 regulatory requirements. This relates to  
 7 Fullerton, California facility; right?  
 8 THE WITNESS: Correct.  
 9 THE ARBITRATOR: That study hadn't  
 10 been done at this time; right? This is a  
 11 proposal to do that.  
 12 THE WITNESS: That's correct.  
 13 THE ARBITRATOR: I take it that  
 14 study was done.  
 15 MR. ZUROFSKY: That is it right  
 16 there, your Honor.  
 17 A. This is it.  
 18 THE ARBITRATOR: That is the study  
 19 just on this one topic.  
 20 MR. ZUROFSKY: One topic for this  
 21 one facility. We also excerpted some documents  
 22 so we don't have to go through it in bulk. Just  
 23 to show you the sense we are talking.  
 24 Q. It fills up the whole box; right?  
 25 THE ARBITRATOR: So they did a

Page 1012

1 JOHN LEASE- CROSS  
 2 study at Fullerton, so I understand what you're  
 3 talking about?  
 4 MR. ZUROFSKY: Yes.  
 5 THE ARBITRATOR: On machine  
 6 guarding.  
 7 MR. ZUROFSKY: Yes.  
 8 THE ARBITRATOR: As a result of  
 9 that study, I take it, they did some corrective  
 10 work on these machines?  
 11 THE WITNESS: That's my  
 12 understanding, your Honor.  
 13 THE ARBITRATOR: How much money  
 14 was spent on that, do you know?  
 15 THE WITNESS: On the study.  
 16 THE ARBITRATOR: Machine guarding  
 17 corrective steps taken at the Fullerton  
 18 facility, do you know?  
 19 MR. ZUROFSKY: Tab 38 will have  
 20 the latest numbers from December you sent to  
 21 Ms. Hall.  
 22 THE ARBITRATOR: Just to follow  
 23 this one issue.  
 24 Q. Tab 38 in the book, on page 2 of 6  
 25 at Fullerton.

Page 1013

1 JOHN LEASE- CROSS  
 2 A. Where are we now?  
 3 Q. Tab 38 in the book from Mr.  
 4 Chesler. I believe Judge Stapleton was asking  
 5 you how much was spent on the machine guarding  
 6 project at Fullerton. I think you communicated  
 7 that information to Ms. Hall in December 2006 at  
 8 tab 38. If you look at line 42 on page 2 of 6  
 9 in the adjusted total what is the number?  
 10 A. 1,032,000.  
 11 Q. 1,032,000 was spent; is that  
 12 correct?  
 13 A. That's correct.  
 14 Q. Go back to your chart under tab 14  
 15 estimated cost there references assessment is  
 16 58,000; right?  
 17 THE ARBITRATOR: That is estimated  
 18 cost for the study?  
 19 THE WITNESS: That is for the study.  
 20 THE ARBITRATOR: Right?  
 21 THE WITNESS: That's correct.  
 22 THE ARBITRATOR: Is it your  
 23 position the giving to Fairchild notice of this  
 24 particular study at Fullerton plant was  
 25 sufficient to put them on notice that there

85 (Pages 1010 to 1013,

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1014

1 JOHN LEASE- CROSS  
2 would be machine guarding studies in a number of  
3 other plants.

4 THE WITNESS: That is our  
5 position, yes.

6 THE ARBITRATOR: So the notice for  
7 other plants, unless there is some notice I am  
8 not aware of, this notice would have covered all  
9 their plants with respect to machine guarding?

10 THE WITNESS: Yes. The situation  
11 we found with respect to --

12 THE ARBITRATOR: Just in general  
13 is that your position?

14 THE WITNESS: Yes. Same issues  
15 existed at all the plants.

16 Q. Coming back to our study here, that  
17 study was performed. You can look through it if  
18 you like. But that is the production that was  
19 made to us by your counsel of the study. Those  
20 documents to your knowledge, Mr. Lease, were  
21 never provided to Fairchild before this  
22 arbitration; right?

23 THE ARBITRATOR: Which documents?

24 MR. ZUROFSKY: The documents in  
25 the box as a result of the study.

Page 1015

1 JOHN LEASE- CROSS

2 THE ARBITRATOR: The actual study?

3 MR. ZUROFSKY: We will look at  
4 some of those pages I excerpted because they  
5 will be unwieldy out, that is the study, right  
6 Mr. Lease.

7 A. Let me look at it.

8 Q. Sure.

9 A. Okay.

10 Q. Does it look like it to you?

11 A. I never seen this before but it  
12 looks like it.

13 Q. It is put together by a company  
14 called STI. Are you familiar with them?

15 A. Yes, I am familiar with the STI  
16 name.

17 Q. Were they the company that Alcoa  
18 hired to do the study and the machine guarding  
19 at the Fullerton facility?

20 A. I believe that's correct.

21 Q. What we prepared is an exhibit.  
22 What number are we up to? 428.

23 (Arbitration Exhibit 428  
24 was marked.)

25 Q. 428 is just an excerpt from that

Page 1016

1 JOHN LEASE- CROSS

2 box, some excerpts from that box. I would like  
3 to draw your attention, Mr. Lease, to three  
4 pages in. To the cover letter.

5 A. Yes, I do.

6 Q. You see that page FAIR 20133 for  
7 the record. It is addressed to Mr. Gerbracht?

8 A. Yes.

9 Q. Who is Mr. Gerbracht?

10 A. Mr. Gerbracht is, I mean he works  
11 at Fullerton, I am not sure what his position  
12 is.

13 Q. From STI. It says "Thank you for  
14 allowing STI Machine Services to assist you in  
15 providing a safer work environment for your  
16 employees. We are pleased to provide our  
17 safeguarding evaluation and proposal for your  
18 review the comprehensive risk evaluation and  
19 turnkey risk guarding solution enclosed, he is  
20 enclosing that box are based on guidelines EN  
21 1050." What is EN 1050, do you know?

22 A. Pardon me?

23 Q. Do you know what EN 1050 is?

24 A. No, I don't.

25 Q. How about ANSI B11 T --

Page 1017

1 JOHN LEASE- CROSS

2 A. No.

3 Q. Do you know if ANSI is a government  
4 entity?

5 A. I believe it stands for American  
6 National Standards Institute.

7 Q. A private entity that puts out  
8 standards?

9 A. I am not sure if they are private  
10 or public.

11 Q. You don't know them to be a  
12 government entity?

13 A. I don't know whether they are  
14 public or private.

15 Q. It says NFPA 79, OSHA 1910, NEC and  
16 other applicable OSHA ANSI and North America  
17 Standards For Safety. Do you see that, sir?

18 A. I see that.

19 Q. Let's move down two paragraphs it  
20 says "Enclosed you will find a detailed  
21 explanation of our machine guarding assessment  
22 process and results of our findings." This is  
23 dated February 16, 2004. This is after Mr.  
24 Harvey's letter to Mr. Miller saying these  
25 studies are being put together and will be sent

86 (Pages 1014 to 1017)

MERRILL LEGAL SOLUTIONS  
(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1018

1 JOHN LEASE- CROSS  
 2 to you; right?  
 3 A. Right.  
 4 Q. It then goes on to say "We have  
 5 also included recommended guarding methods and  
 6 materials along with a plan view drawing of the  
 7 proposed guarding solutions. This information  
 8 is confidential, proprietary." Do you see that?  
 9 A. Yes.  
 10 Q. He is talking about proposed  
 11 guarding solutions here; right?  
 12 A. Yes.  
 13 Q. What we are talking about with  
 14 respect to the money, the million dollars or so  
 15 spent on guarding, the proposal, the proposed  
 16 response is contained in these documents; right?  
 17 A. This is a, I believe an individual  
 18 assessment for each piece of equipment.  
 19 Q. For each of the machines?  
 20 A. I believe that is the case.  
 21 Q. Similar surveys were they not  
 22 performed at the other facilities for which  
 23 Alcoa has incurred machine guarding expenses?  
 24 A. I am not sure where all of the  
 25 facilities were that we did surveys, I

Page 1019

1 JOHN LEASE- CROSS  
 2 believe --  
 3 Q. This is not the only survey of this  
 4 type?  
 5 A. I don't believe it is.  
 6 Q. There is also surveys performed for  
 7 other issues such as lock tag verify?  
 8 THE ARBITRATOR: For what?  
 9 MR. ZUROFSKY: Lock tag verify.  
 10 Q. And fall compliance, Mr. Lease?  
 11 A. I believe that was a survey process  
 12 assessment, yes.  
 13 Q. Fall protection, I mean. Fall  
 14 protection and confined space, the activity you  
 15 were describing to Judge Stapleton earlier;  
 16 right?  
 17 A. Yes.  
 18 Q. Some of the other, pretty much all  
 19 the other items we've been talking about that  
 20 are any material value; right, Mr. Lease?  
 21 A. I don't know if surveys were  
 22 performed for all those or not.  
 23 Q. There were a number of surveys  
 24 done?  
 25 A. There were surveys done for fall

Page 1020

1 JOHN LEASE- CROSS  
 2 protection, machine guarding, lock tag verify.  
 3 I don't know what else.  
 4 Q. As we work our way, I want to  
 5 finish this document, ask you one question, then  
 6 we are going to break for the day. On  
 7 page 20135 see at the bottom there, there is a  
 8 chart level of risk and score?  
 9 A. Yes, I see it.  
 10 Q. There is three categories, high,  
 11 medium, low. Do you see that there?  
 12 A. Yes.  
 13 Q. So this is an assessment by STI of  
 14 whether certain machines fall into each of those  
 15 categories; is that how you understand it?  
 16 A. I believe that is correct based on  
 17 what I see here at the top. This represents  
 18 risk for an individual piece of equipment.  
 19 Q. Let's move forward in the document  
 20 to page 21804. Okay. There are, what fills up  
 21 that box are lots of pages like this with  
 22 picture of machine and analysis. Okay. But  
 23 this is one example. Do you see 21804?  
 24 A. Yes, I do.  
 25 Q. It says there risk level low, do

Page 1021

1 JOHN LEASE- CROSS  
 2 you see that?  
 3 A. Okay.  
 4 Q. Some of the machines were not at  
 5 high risk according to this report?  
 6 A. I see potential severity, potential  
 7 injury is serious, frequency of exposure,  
 8 seldom, probability of injury is possible. So,  
 9 you know, based on their assessment they are  
 10 assigning a low risk level.  
 11 I would point out that it does  
 12 reflect serious injury potential for this  
 13 particular piece of equipment.  
 14 Q. Look at the line that says this  
 15 machine, a little below that.  
 16 A. Right.  
 17 Q. This machine is currently  
 18 safeguarded and existing safeguards reduce risk  
 19 to a low negligible level. Residual risk, the  
 20 residual risk level will be negligible to low if  
 21 the recommended guards are installed correctly  
 22 this is based on STI, that's the company,  
 23 interpretation of an ANSI TR 3. Do you see  
 24 that?  
 25 A. Yes, I do.

87 (Pages 1018 to 1021)

Page 1022

JOHN LEASE- CROSS

Q. If you look through the examples, if you look through the box you see the reference to ANSI TR 3 in pretty much everyone of these individual studies. I want to ask you again do you know what ANSI TR 3 is?

A. No.

Q. You don't know if ANSI is government regulation or requirement?

A. I am not familiar with OSHA machine guarding. But I know that OSHA standards generally refer to various trade standards by incorporation into the regulation.

Q. You don't know if this one is incorporated into ash yo do you?

A. Specifically I don't.

Q. It is your understanding, I think you told me at your deposition for compliance issues under the indemnity only compliance with laws and not some other standards qualify for indemnification; right, Mr. Lease?

A. To the extent that the standards are not incorporated into the regulation.

Q. If a standard is not incorporated into a regulation you would agree work done to

Page 1023

JOHN LEASE- CROSS

meet that standard does not qualify for indemnification under the agreement; right, sir?

A. That is my general understanding, yes.

Q. One other question, then we will break for the day. You said you prepared the scopes of work of work and handed them to Mike Hodge for Phase II; right?

A. I am not sure if I handed them to them or how he got them.

Q. Why did you give them to Mr. Hodge?

A. We discussed the upcoming activities after the acquisition and informed him we are going to do Phase II studies. So we had the scope of work prepared by ERM at the time we provided them to make.

Q. Back to our three buckets we talked about of notice, right. The scopes of work for Phase IIs you say would qualify for first two buckets, right, they tell Mr. Hodge there is a condition, it tells him what you are going to do about it; right?

A. Generally that's correct.

Q. It is those scopes of work Mr.

Page 1024

JOHN LEASE- CROSS

Harvey was promising to Mr. Miller would be provided for all items on the charts for those three facilities that are referenced in that letter; right?

A. That is my understanding of what a scope of work is. When Sandy wrote it I am not sure what he meant. He was not involved on the technical end of the activity.

Q. This document, I read you the cover email, he talks about proposed guarding solution recommendations and things like that. That would qualify as proposal of this is what we are going to do?

A. In my letter?

Q. No. The box of documents in front of you from STL. With respect to machine guarding, isn't that really a proposal as to what we are going to do with these machine that resulted in the million dollars cost or so of machine guarding at Fullerton?

A. This appears to me to be a risk assessment of the equipment.

Q. Back to the first cover letter.

A. It describes risks associated with

Page 1025

JOHN LEASE- CROSS

the equipment. The cost to correct that risk to whatever level is appropriate under the regulation.

Q. Mr. Lease, we spoke about this before. I am going to draw your attention back to the cover letter from STI FAIR page 20133.

A. Okay.

Q. The line in the third paragraph beginning we have also included. Do you see that?

A. Which paragraph are you on?

Q. Third paragraph. The one that begins "enclosed." Second line "We have also included recommended guarding methods and materials along with a plan view drawing of the proposed guarding solutions." Do you see that?

A. I see that.

Q. I think you agreed with me, using Mr. Chesler's definition of scope of work he said this is what we are going to do, this document contains information about what Alcoa was going to do and eventually did at the Fullerton machine guarding; right?

A. I don't know what aspects of this

88 (Pages 1022 to 1025)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

2c5facfb-a662-4159-8094-057d0344af74

Page 1026

1 JOHN LEASE- CROSS  
 2 report were actually converted into an actual  
 3 project.  
 4 Q. Isn't it true the reason you gave  
 5 Mike Hodge the statements of work for Phase II  
 6 because you knew environmental contamination was  
 7 something that qualified in the agreement, but  
 8 you didn't give these documents because you knew  
 9 machine guarding didn't?  
 10 A. No. That is not the case.  
 11 MR. ZUROFSKY: Let's break for the  
 12 day.  
 13 THE ARBITRATOR: I have a few  
 14 questions before we quit. There is a series of  
 15 a box full of documents there which they review  
 16 and evaluate potential dangers of all these  
 17 pieces of equipment. Later they attempt to  
 18 quantify the severity, frequency, probability,  
 19 level of risk. Do these reports also include  
 20 estimate of the cost to do the corrections they  
 21 might suggest or could potentially be done? I  
 22 see numbers in here, I assume that is what it  
 23 is.  
 24 MR. ZUROFSKY: It is.  
 25 THE WITNESS: I believe that is it.

Page 1027

1 JOHN LEASE- CROSS  
 2 That is the estimated price.  
 3 THE ARBITRATOR: So these reports  
 4 all went where within Alcoa, to the local  
 5 factory manager?  
 6 THE WITNESS: Yes, they went to the  
 7 local facilities manager, HS manager,  
 8 specifically.  
 9 THE ARBITRATOR: Who made the  
 10 decision as to which of these recommendations  
 11 would be implemented?  
 12 THE WITNESS: That was a local  
 13 decision at the plant.  
 14 THE ARBITRATOR: If some of these  
 15 things, one I looked at quickly had a 4 risk  
 16 which is a fairly low risk, I take it, the  
 17 decision as to whether to do that particular job  
 18 was made locally at the plant?  
 19 THE WITNESS: Basically, yes. I  
 20 think they base the action on the highest risk  
 21 machines first when they did implementation.  
 22 THE ARBITRATOR: They didn't  
 23 necessarily do all the ones that were studied, I  
 24 take it?  
 25 THE WITNESS: No. That's true.

Page 1028

1 JOHN LEASE- CROSS  
 2 THE ARBITRATOR: They made a local  
 3 decision as to which ones to do or not to do?  
 4 THE WITNESS: Yes.  
 5 THE ARBITRATOR: I guess these  
 6 particular reports and proposals were not sent  
 7 to Fairchild at any point?  
 8 THE WITNESS: I don't believe  
 9 they were.  
 10 THE ARBITRATOR: All right.  
 11 (Time Noted: 5:11 p.m.)  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 1029

1  
 2 CERTIFICATE  
 3  
 4 STATE OF NEW YORK )  
 5 : ss.  
 6 COUNTY OF NEW YORK )  
 7  
 8 I, TAMMEY M. PASTOR, a Registered  
 9 Professional Reporter, Certified LiveNote  
 10 Reporter and Notary Public within and for the  
 11 State of New York, do hereby certify that the  
 12 foregoing proceedings were taken before me on  
 13 January 10, 2007;  
 14 That the within transcript is a true  
 15 record of said proceedings;  
 16 That I am not connected by blood or  
 17 marriage with any of the parties herein nor  
 18 interested directly or indirectly in the matter  
 19 in controversy, nor am I in the employ of the  
 20 counsel.  
 21 IN WITNESS WHEREOF, I have hereunto  
 22 set my hand this \_\_\_\_ day of \_\_\_\_\_,  
 23 2007.  
 24  
 25 TAMMEY M. PASTOR, RPR, CLR

89 (Pages 1026 to 1029)

Page 1030

INDEX

WITNESS:

PAGE:

(Arbitration Exhibit 428 was marked.) 1015

\*\*\*\*\*

\*\*\*\*\*

90 (Page 1030)

MERRILL LEGAL SOLUTIONS  
(800) 325-3376

[www.MerrillCorp.com](http://www.MerrillCorp.com)

2c5facfb-a662-4159-8094-057d0344af74

**In The Matter Of:**

*In re: THE FAIRCHILD CORPORATION*

---

**ARBITRATION**

*January 11, 2007*

---

***MERRILL LEGAL SOLUTIONS***

*420 Lexington Avenue - Suite 2108*

*New York, NY 10170*

*PH: 212-557-7400 / FAX: 212-692-9171*

**ARBITRATION - Vol. 4**

Page 1031

CPR INSTITUTE OF DISPUTE RESOLUTION  
-----x

In Re  
THE FAIRCHILD CORPORATION,  
Claimant,

-against-

ALCOA CORPORATION,

Respondent.

-----x  
Cravath, Swaine & Moore, LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York

January 11, 2007

9:00 a.m.

B E F O R E:

JAMES F. STAPLETON, Arbitrator

TAMMEY M. PASTOR, RPR, CLR, Hearing Reporter

Page 1032

1 APPEARANCES:

2 CAHILL, GORDON & REINDEL LLP,  
3 Attorneys for FAIRCHILD CORPORATION  
4 80 Pine Street  
5 New York, New York 10005

6 BY: ADAM ZUROFSKY, ESQ.  
7 ROBERT M. HALLMAN, ESQ.  
8 TAMMY L. ROY, ESQ.  
9 ADAM MADAR, ESQ.  
10 -and-  
11 ELIZABETH RICHMAN, ESQ.

12 CRAVATH, SWAINE & MOORE, LLP  
13 Attorneys for ALCOA CORPORATION  
14 Worldwide Plaza  
15 825 Eighth Avenue  
16 New York, New York 10019

17 BY: EVAN CHESLER, ESQ.  
18 DANIEL SLIFKIN, ESQ.  
19 STEPHEN E. FRANK, ESQ.  
20 ROBERT K. SIMONDS, ESQ.  
21 JERMEY WINER, ESQ.  
22 -and-  
23 MARCUS J. GREEN, ESQ.

24 ALSO PRESENT:

25 MEREDITH SHAW, CRAVATH, SWAINE & MOORE, LLP  
LAUREN GREDITZER, CRAVATH, SWAINE & MOORE, LLP  
SARA BRAUNER, CAHILL GORDON & REINDEL LLP  
MARK A. BARTHOLIC, ESQ., ALCOA

Page 1033

1 JOHN LEASE - CROSS

2 JOHN LEASE,

3 resumed, having been previously duly sworn, was  
4 examined and testified further as follows:

5 MR. ZUROFSKY: Good morning your  
6 Honor. Just before resuming with Mr. Lease,  
7 just some housekeeping issues. Yesterday as you  
8 will recall, your Honor, Alcoa introduced bulk  
9 Exhibit C which is those shelves there.

10 THE ARBITRATOR: Yes.

11 MR. ZUROFSKY: We didn't get a  
12 copy of that, we only got the indexes. I am  
13 trying to figure out the best way to manage sort  
14 of document management here today. We have, as  
15 you know, your Honor, yesterday put in front of  
16 you a binder of correspondence that are  
17 organized chronologically by site. We have  
18 taken out some of the attachments and exhibits  
19 to make it fit in one binder. It is not  
20 everything in Exhibit C, obviously.

21 What I am going to try to do today,  
22 if it makes sense, to the extent one of those  
23 documents is in Mr. Chesler's binder he handed  
24 Mr. Lease, I will certainly refer to that. I  
25 can't pull Exhibit C off the shelf with copies.

Page 1034

1 JOHN LEASE - CROSS

2 I have to work off this. At the end we can make  
3 you a compendium out of this binder, however you  
4 think makes most sense.

5 THE ARBITRATOR: If you would take  
6 out the duplicates, if you are not referring to  
7 them separately, you can do that.

8 MR. ZUROFSKY: Right. We will get  
9 you a version of that. That makes sense. Also  
10 just for the record, I would like to mark that  
11 binder as our bulk Exhibit A. I think I gave  
12 you a copy of it earlier.

13 THE ARBITRATOR: It is the binder  
14 that is now marked correspondence binder.

15 MR. ZUROFSKY: That will be  
16 Fairchild bulk Exhibit A.

17 We also yesterday had looked at a  
18 specific document which was a letter from  
19 Mr. Harvey, just so we are all tidy since we  
20 hadn't marked the binder before, we will mark  
21 this as 429.

22 (Arbitration Exhibit 429  
23 was marked.)

24 MR. ZUROFSKY: You have a copy of  
25 this in the binder, just for good order sake,

1 (Pages 1031 to 1034)

Page 1035

1 JOHN LEASE - CROSS  
2 this is 429 this is the letter from Mr. Harvey  
3 that we looked at yesterday. So that is just my  
4 housekeeping.

5 THE ARBITRATOR: This is in the  
6 binder?

7 MR. ZUROFSKY: It is in the  
8 binder. It hadn't been marked yesterday, we  
9 thought for good order sake we would put it in  
10 the record officially. It was under, there are  
11 several versions of it in the binder because it  
12 relates to more than one facility. We looked at  
13 the one under Fullerton tab.

14 THE ARBITRATOR: Which one?

15 MR. ZUROFSKY: Fullerton tab.

16 THE ARBITRATOR: Tab number?

17 MR. ZUROFSKY: It should say  
18 Fullerton. The one with the numbers is  
19 Mr. Chesler's. Our is the one with the site  
20 names. That is the one we were looking at.  
21 Then we looked at machine guarding report and  
22 all that.

23 CROSS-EXAMINATION BY MR. ZUROFSKY:

24 Q. Mr. Lease, I want to reset where we  
25 were from yesterday. There was a lot of paper

Page 1036

1 JOHN LEASE - CROSS  
2 flying and discussions. I just want to make  
3 sure we are all working off the same ideas as we  
4 go forward today.

5 We talked yesterday about three  
6 times of, I think we used the word notice, but  
7 information that were to be imparted to  
8 Fairchild. Let's just make sure we all agree  
9 with what they are. There was one you called  
10 notice of liability. Do you recall that, sir?

11 A. I think there is a notice of --  
12 okay, notice of liability.

13 Q. I think you used that term when you  
14 spoke, answered Judge Stapleton's questions with  
15 respect to costs already incurred; is that  
16 right?

17 A. As per the table that we viewed?

18 Q. No. Not per the table we reviewed.  
19 The one with the asterisk, that table are you  
20 referring to?

21 A. Liability table, yes.

22 Q. That one?

23 A. Notice of liability is reflected  
24 there.

25 Q. That we defined as notice of

Page 1037

1 JOHN LEASE - CROSS

2 expenses already incurred; right?

3 A. That would have been correct.

4 Q. Then we also talked about notice of  
5 a condition; right? Which we looked at on the  
6 screen 11.6 D. Do you recall that?

7 A. I recall the term. I'm not sure  
8 about the sections in the agreement.

9 Q. Fair enough. The term notice of  
10 condition. Here is a condition.

11 A. Notice of environmental condition,  
12 yes.

13 Q. Then we talked also the third  
14 category, I think we actually called it  
15 yesterday the second category, we will try to  
16 keep it straight, was notice of proposed  
17 response. In other words, this is what we are  
18 going to do, do you recall that?

19 A. Yes.

20 Q. Those are the three categories of  
21 notice that we talked about.

22 Now, we also spent some time  
23 yesterday sort of bouncing back and forth  
24 between the chart that had asterisk on it then  
25 some of what you called gap analysis summaries.

Page 1038

1 JOHN LEASE - CROSS

2 Do you recall that?

3 A. Yes.

4 Q. Those items we discussed yesterday,  
5 both with the asterisk and the gap analysis  
6 summaries, those related to compliance issues as  
7 opposed to contamination issues; right?

8 A. Yes.

9 Q. Let's just to keep ourselves  
10 organized today, let's take contamination issues  
11 for a minute, put that off to the side. We will  
12 deal with that a little later. I want to finish  
13 our discussion of compliance related claims  
14 okay.

15 A. Okay.

16 Q. I think --

17 THE ARBITRATOR: Compliance  
18 relating to environmental conditions?

19 MR. ZUROFSKY: Well, yes. They  
20 made claims for compliance, your Honor, if you  
21 look at tab 41, I guess of Mr. Chesler's chart,  
22 Mr. Chesler's binder, it has that break down of  
23 three pages.

24 A. Yes.

25 Q. The first page deals with

Page 1039

JOHN LEASE - CROSS

environmental contamination. For the moment I want to put that to the side because that is a separate item relating to the Phase II investigations and follow on investigations about whether or not there was contamination in the soil and how they deal with it.

The next two pages, Mr. Lease, you can tell me if you agree with this, the next two pages where the first title of that page is waste water, storm water, sewer, septic?

A. Yes.

Q. Those are what I believe you referred to as compliance issues, those two pages; right?

A. Yes, that's correct.

Q. I want to finish our discussion of the items that relate to those two pages, compliance issues now. I want to leave contamination to the side for a minute. Okay?

A. Okay.

Q. I think we discussed yesterday the series of four letters, the summary gap analysis charts; right?

A. Yes.

Page 1040

JOHN LEASE - CROSS

Q. Those related to four locations, right, the St. Cosme facility, the Toulouse facility, the Torrance facility and Fullerton facility; right?

A. Yes.

Q. So, if you look at the chart that you had in tab 41, there is the column other correspondence.

THE ARBITRATOR: St. Cosme, Toulouse, what were the other?

MR. ZUROFSKY: Torrance and Fullerton, your Honor.

Q. We spent some time yesterday with the Fullerton letter. You recall those are the letters and St. Cosme is slightly different, we will come back to it, those are letters you wrote, Mr. Miller wrote back saying please provide documentation. Mr. Harvey wrote back saying we will provide documentation. Do you recall that discussion yesterday, Mr. Lease?

A. Yes.

MR. CHESLER: Object to the characterization of the letters. They say what they say.

Page 1041

JOHN LEASE - CROSS

Q. Do you recall discussion of those letters yesterday, Mr. Lease?

A. Yes.

Q. The column other correspondence on the two pages of tab 41 which relates to compliance issues, do you see those there?

A. Yes.

Q. First thing I want to look to are dates of all those letters. If you just scan down those two pages, is there any date that appears to you to be after December 31, 2004?

A. No.

Q. So those letters were all in the first two years or so of the period after the acquisition; right?

A. That's correct.

Q. There has been about two years since then now, we are in 2007; right?

A. Yes.

Q. So those are all the first two years. Do you remember yesterday Mr. Chesler -- those relate to all the compliance issues, those are all letters related to all compliance issues; right?

Page 1042

JOHN LEASE - CROSS

A. No. In addition to the Phase I reports, which we also include as notice.

Q. Those are in 2002 also. So they still predate December 31, 2004; right?

A. That's right.

Q. We will look at the Phase II a little later. I am talking now about the correspondence.

MR. CHESLER: Phase I.

Q. Sorry. Phase I talking now just about correspondence?

A. Phase I?

Q. Yes. Phase I. All those correspondence go until latest December of 2004; right?

A. That's correct.

Q. For all the compliance issues?

A. This correspondence, yes.

Q. We looked yesterday at one report related to machine guarding at Fullerton which took up a whole box; right?

A. The one you delivered up here?

Q. Yes.

A. Yes.

3 (Pages 1039 to 1042)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

Page 1043

1 JOHN LEASE - CROSS

2 Q. We discussed at the end of the day  
3 yesterday there were other assessments and  
4 surveys for machine guarding at other  
5 facilities; right?

6 A. I believe that's true, yes.

7 Q. And for many of the other items  
8 listed on this chart, the lock tag verify, fall  
9 compliance there were surveys and assessments  
10 done for those?

11 A. I know they were planned. I don't  
12 have physical evidence in my possession they  
13 were all done. But they were planned.

14 Q. There were a number of them done to  
15 your understanding?

16 A. Okay.

17 Q. So now remember Mr. Chesler  
18 yesterday was talking about this big exhibit,  
19 bulk C exhibit with the two shelves and all the  
20 correspondence and all of that; right? Do you  
21 recall that?

22 A. Yes.

23 Q. And we asked for a copy of it, but  
24 we got an index of it, we were able to look at  
25 it last night. Can you tell me out of all the

Page 1044

1 JOHN LEASE - CROSS

2 shelves, all those binders in the shelves which  
3 binders relate to all of the correspondence  
4 related to the compliance issues?

5 A. I haven't looked at that, so I  
6 don't know.

7 Q. Let's take a look. Binder 1 and  
8 the indexes which Alcoa provided demonstrates  
9 this, is all the letters and correspondence  
10 between the closing date and December 31, 2004.  
11 This is it. Okay?

12 A. Okay.

13 Q. If you want we can introduce the  
14 indexes.

15 MR. CHESLER: Is there a question?

16 MR. ZUROFSKY: I'm getting there.

17 Q. Mr. Lease, I show you this exhibit,  
18 this is the indexes. See it? I will leave this  
19 for you, too. What does it indicate is the last  
20 date for volume two, first entry for volume two,  
21 it should be on the second page, third page.

22 THE ARBITRATOR: What was the  
23 question on Volume 1?

24 Q. Volume 1. Does Volume 1 contain  
25 all the correspondence between the closing date

Page 1045

1 JOHN LEASE - CROSS

2 and December 31, 2004?

3 A. What is your question?

4 Q. Does Volume 1, as you understand it  
5 contain all of the correspondence between the  
6 closing date and December 31, 2004 based on your  
7 read of the indexes and knowledge about the  
8 binders?

9 MR. CHESLER: Excuse me, your  
10 Honor, correspondence about what?

11 MR. ZUROFSKY: Between the  
12 companies, any of the notice correspondence  
13 Mr. Lease testified about yesterday.

14 A. I want to make sure I understand  
15 what you're asking. You're asking Volume 1  
16 contains all of the correspondence related to  
17 compliance issues?

18 Q. That is eventually what I'm asking.  
19 Right now I'm asking you a date question. Based  
20 on review of the indexes, is it fair to say that  
21 everything on those two shelves that postdates  
22 December 31, 2004 is contained in -- let me  
23 rephrase it. Everything that predates December  
24 31, 2004 is contained in Volume 1.

25 A. Everything that predates December

Page 1046

1 JOHN LEASE - CROSS

2 31, 2004.

3 Q. December 31, 2004.

4 A. Is in Volume 1?

5 Q. Yes.

6 A. That is what this appears to  
7 indicate, yes.

8 Q. That is Volume 1, that thin binder  
9 on top of the witness stand; right?

10 A. Yes.

11 Q. Let's put that back. Is it fair to  
12 say based on your chart, everything Alcoa told  
13 Fairchild about compliance issues is contained  
14 in that first binder we just looked at?

15 MR. CHESLER: Your Honor, excuse  
16 me, I don't mean to interrupt the examination.  
17 I do object to that. We just been through the  
18 fact, quote, we put to the side the first two  
19 shelves. Counsel just asked everything we told  
20 Fairchild. That is a misleading question.

21 MR. ZUROFSKY: Everything about,  
22 of course leaving aside the Phase I and Phase  
23 II. We will get to that later.

24 Q. Leave aside the Phase I and Phase  
25 IIs in that first binder. Is everything that

Page 1047

Page 1049

1 JOHN LEASE - CROSS

2 Alcoa told Fairchild about compliance issues,  
3 leaving aside first two shelves, in that first  
4 binder, Mr. Lease?

5 A. I don't know. There were other  
6 issues related to compliance I believe in  
7 documentation related to the Phase IIs and  
8 follow on work. I can't attest to the fact  
9 everything outside of that one binder does not  
10 contain compliance information.

11 Q. There is nothing cited in the chart  
12 on page 41, is there, that would be outside that  
13 first binder -- tab 41?

14 A. You are just talking about column  
15 titled Other Correspondence?

16 Q. Yes.

17 THE ARBITRATOR: When you say  
18 compliance issues, are any of the compliance  
19 issues relating to environmental matters or they  
20 could be all matters?

21 MR. ZUROFSKY: I am actually now  
22 referring to all matters, your Honor, they made  
23 claims for compliance issues not just for  
24 environmental matters.

25 THE ARBITRATOR: All other matters

Page 1048

1 JOHN LEASE - CROSS

2 but it includes environmental matters?

3 MR. ZUROFSKY: Correct.

4 Q. Mr. Lease?

5 A. I have lost track of your question,  
6 sorry.

7 Q. Maybe it is easier to come this  
8 way, on the two pages on tab 41 that deal as we  
9 discuss with compliance matters; right?

10 A. Yes.

11 Q. You know what pages I'm talking  
12 about?

13 A. Yes.

14 Q. The letter cited there, none of  
15 them postdate December 31, 2004?

16 A. That's correct.

17 Q. Based on the indexes for Exhibit C  
18 the correspondence up to December 31, 2004 is  
19 all in that first binder; correct?

20 A. Okay.

21 Q. Right?

22 A. Presumably. I didn't look at every  
23 document.

24 THE ARBITRATOR: You have to look  
25 at the indexes. He is asking you to look at the

1 JOHN LEASE - CROSS

2 indexes, not the volume.

3 MR. ZUROFSKY: We looked at the  
4 indexes a minute ago. You said it did appear to  
5 be that way.

6 A. The indexes would seem to match  
7 these entries.

8 Q. I want to talk about the letters  
9 listed here on tab 41. Before I go on,  
10 Fairchild began the mediation process in  
11 beginning of 2005; right?

12 A. I am not sure what the date was.

13 Q. We'll look at that a little later.

14 So now on tab 41 chart --

15 A. Okay.

16 Q. Okay. These letters listed under  
17 other correspondence, do you see that?

18 A. Yes.

19 Q. The letters, the first two we see  
20 are related to the St. Cosme facility; right?

21 A. Yes.

22 Q. What we are going to do now, we are  
23 going to go through our discussion of the  
24 letters you sent to Fairchild regarding  
25 compliance issues. Some of which we looked at

Page 1050

1 JOHN LEASE - CROSS

2 yesterday. But let's make sure we've got them  
3 all.

4 So, turn to tab 6 in the binder  
5 that Mr. Chesler handed to you. This is the  
6 first letter, do you have it there, sir?

7 A. Pardon me?

8 Q. Tab 6 in the binder Mr. Chesler  
9 handed you yesterday. You have it there?

10 A. Yes, I do.

11 Q. This is the letter, March 4, 2003  
12 to Michael Hodge that is referenced under the  
13 heading Other Correspondence in tab 41 is the  
14 first entry; isn't it?

15 A. Yes.

16 Q. This is the letter. You provide,  
17 this is one of the summary gap analysis you were  
18 talking about yesterday?

19 A. That's correct.

20 Q. This relates to the St. Cosme  
21 facility?

22 A. For St. Cosme, yes.

23 Q. We are working our way through.  
24 You have a chart attached to this letter; right  
25 yes?

5 (Pages 1047 to 1050)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

Page 1051

1 JOHN LEASE - CROSS  
2 A. Okay.  
3 Q. On that chart is a number of items.  
4 I want to focus for now on number 5 which is  
5 machine guarding. Do you see that, sir?  
6 A. Yes, I do.  
7 Q. Do you see under estimated cost  
8 there is an ND?  
9 A. Yes.  
10 Q. Below it says ND means not yet  
11 determined?  
12 A. Yes.  
13 Q. The same thing for fall control  
14 requirements, it says ND?  
15 A. Yes, that's right.  
16 THE ARBITRATOR: Which other item?  
17 MR. ZUROFSKY: Fall, number 4  
18 right above it, your Honor. Above that is  
19 storage of hazardous chemicals and so on. I am  
20 focusing on numbers 4 and 5.  
21 Q. You sent this letter to Mr. Hodge  
22 on March 4; right?  
23 A. Yes.  
24 Q. Mr. Hodge relied -- sorry,  
25 Mr. Miller replied on behalf of Fairchild, tab 7

Page 1052

1 JOHN LEASE - CROSS  
2 of your binder from Mr. Chesler?  
3 A. Which tab?  
4 Q. Tab 7. Alcoa Arbitration Exhibit  
5 40?  
6 A. Okay.  
7 Q. This is Mr. Miller's letter related  
8 to the St. Cosme facility; correct?  
9 A. That's correct.  
10 Q. Mr. Miller says in the first  
11 paragraph "We reviewed your letter. Fairchild  
12 leads us to question -- this leads us to  
13 question whether all of the items listed in the  
14 table fall within the ambit of section 11.6.  
15 And whether the estimated costs in that table  
16 are justified."  
17 Do you see that, Mr. Lease?  
18 A. Yes, I do.  
19 Q. Then Mr. Miller says, "So that we  
20 may more fully consider these issues, please  
21 provide us with specific and complete background  
22 documentation supporting the items and costs  
23 provided in the table."  
24 Then Mr. Miller says "We will  
25 respond further as appropriate once we have had

Page 1053

1 JOHN LEASE - CROSS  
2 the opportunity to review such documentation."  
3 Do you see that?  
4 A. Yes.  
5 Q. Now you responded to that,  
6 Mr. Miller's letter; didn't you, Mr. Lease?  
7 A. Yes, I did.  
8 Q. That is the second, back on tab 41,  
9 as we are going down that chart, of other  
10 correspondence, that is the second item listed;  
11 is it not?  
12 A. I believe, yes, it is.  
13 Q. It is listed as an April 8, 2003  
14 letter from you to Mr. Miller. Which is found  
15 at tab 12 of your binder that Mr. Chesler handed  
16 you. Do you see that?  
17 A. Yes.  
18 Q. You respond to Mr. Miller and the  
19 second sentence of your response says "My letter  
20 was intended to provide you with the information  
21 that we had at that point in our review." Do you  
22 see that, Mr. Lease?  
23 A. Yes.  
24 Q. Then you tell Mr. Miller, "Alcoa is  
25 developing final action plans and associated

Page 1054

1 JOHN LEASE - CROSS  
2 costs for correcting the noncompliance issues  
3 identified at the St. Cosme facility therefore  
4 updated cost data is not available at that  
5 time." Do you see that?  
6 A. Yes, I do.  
7 Q. Was that true at that time?  
8 A. Pardon.  
9 Q. Was that true at that time?  
10 A. I believe it was, yes.  
11 Q. You go on and say "However, to  
12 provide further background detail on the  
13 noncompliance issues listed in the table, a  
14 column has been added which provides further  
15 description of the issue and applicable  
16 regulation."  
17 That is the column yesterday that  
18 Mr. Chesler discussed with you and Judge  
19 Stapleton asked about in the middle of the  
20 chart; right, Mr. Lease?  
21 A. Pardon me?  
22 Q. Remember yesterday there was  
23 discussion about additional column in this  
24 letter?  
25 A. Yes.

6 (Pages 1051 to 1054)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

Page 1055

1 JOHN LEASE - CROSS  
 2 Q. That is the column being referred  
 3 to; right?  
 4 A. That's correct.  
 5 Q. Then you go on to say "As the cost  
 6 estimates," if you recall Mr. Miller asked you  
 7 about that, as the cost estimates are updated  
 8 and finalized we will communicate this  
 9 information to Fairchild Corporation. Do you  
 10 see that, Mr. Lease?  
 11 A. Yes, I do.  
 12 Q. You recall back in Mr. Miller's  
 13 letter which was at tab 7 he said "We will  
 14 respond further as appropriate once we have had  
 15 the opportunity to review the documentation he  
 16 requested." Do you see that?  
 17 A. Yes.  
 18 Q. Here you are saying you will  
 19 provide Fairchild with finalized and updated  
 20 cost estimates; right?  
 21 A. Yes.  
 22 Q. You never did that; did you, sir?  
 23 A. These cost estimates didn't change  
 24 a great deal between then and the final  
 25 solution, we developed cost estimates for fall

Page 1056

1 JOHN LEASE - CROSS  
 2 control surveys and machine guarding surveys.  
 3 Q. Let's look at that chart. Remember  
 4 I pointed you to machine guarding item 5? Do you  
 5 recall that?  
 6 A. Which chart are we on now?  
 7 Q. Either one. The chart attached,  
 8 let's do it to the letter of April 8, the one  
 9 you sent to Mr. Miller. You said further cost  
 10 estimates will be forwarded.  
 11 A. Okay.  
 12 Q. There we have, again, machine  
 13 guarding which is item 5, again as ND, not yet  
 14 determined; right?  
 15 A. Yes.  
 16 Q. How much did Alcoa or how much to  
 17 date because it is still going on did Alcoa, has  
 18 Alcoa spent so far on machine guarding at St.  
 19 Cosme?  
 20 A. I don't have that figure offhand.  
 21 Q. Turn to tab 38 in the binder  
 22 Mr. Chesler handed you yesterday which is your  
 23 December letter that contains the latest  
 24 numbers.  
 25 THE ARBITRATOR: Which tab?

Page 1057

1 JOHN LEASE - CROSS  
 2 MR. ZUROFSKY: Tab 38, your Honor.  
 3 Q. Do you have that, Mr. Lease?  
 4 A. Yes.  
 5 Q. Do you see it, sir?  
 6 A. Yes, I do.  
 7 Q. So, if you look on page 3 of 6 of  
 8 the chart --  
 9 THE ARBITRATOR: I am at the chart  
 10 with the final expenses to date.  
 11 MR. ZUROFSKY: Yes. As of  
 12 December 2006. Just last month.  
 13 THE ARBITRATOR: What page is that  
 14 on?  
 15 MR. ZUROFSKY: Which page is the  
 16 item I'm looking for?  
 17 THE ARBITRATOR: Yes.  
 18 MR. ZUROFSKY: I think it is  
 19 marked in bulk Exhibit C as 24002.  
 20 THE ARBITRATOR: We were looking  
 21 at Exhibit 38.  
 22 MR. ZUROFSKY: Yes, your Honor.  
 23 THE ARBITRATOR: Is it listed on  
 24 Exhibit 38.  
 25 MR. ZUROFSKY: It is.

Page 1058

1 JOHN LEASE - CROSS  
 2 THE ARBITRATOR: Where is it?  
 3 MR. ZUROFSKY: Page 3 of 6 of the  
 4 chart, line 90.  
 5 Q. Do you see that, Mr. Lease?  
 6 A. Yes.  
 7 MR. ZUROFSKY: Your Honor, do you?  
 8 THE ARBITRATOR: I have it.  
 9 Q. How much is adjusted total through  
 10 September 2006 for machine guarding at St.  
 11 Cosme, Mr. Lease?  
 12 A. \$625,000.  
 13 Q. And 142.72; right?  
 14 A. Yes.  
 15 Q. Just to get the full number.  
 16 A. Yes.  
 17 Q. That is how much has been spent at  
 18 St. Cosme on machine guarding since the time of  
 19 the letter you wrote to Mr. Miller in April of  
 20 2003; correct?  
 21 A. That's correct.  
 22 Q. It is listed there as not  
 23 determined in terms of price; right?  
 24 A. Not determined at that time.  
 25 Q. Right. You told Mr. Miller you

7 (Pages 1055 to 1058)

Page 1059

1 JOHN LEASE - CROSS  
 2 would provide updated and finalized cost  
 3 estimates; correct?  
 4 A. That's what I said, yes.  
 5 Q. Let's talk also about fall  
 6 protection, the fall control number. Again in  
 7 tab 38 we can look at that. I will get you the  
 8 line item. It is line item 65 on page 2 of 6.  
 9 How much does it list there, sir?  
 10 A. \$37,857.  
 11 Q. Back on your chart on the April 8th  
 12 letter, the one you sent to Mr. Miller which is  
 13 at tab 6 -- sorry, tab 8. I apologize, tab 12  
 14 of the binder from Mr. Chesler.  
 15 A. Okay. I'm there.  
 16 Q. The one above fall control  
 17 requirements that actually has a number is  
 18 improper storage of hazardous chemicals and  
 19 waste. Do you see that?  
 20 THE ARBITRATOR: Where are you  
 21 now?  
 22 MR. ZUROFSKY: Back on tab 12 of  
 23 Mr. Chesler's binder. The chart attached to the  
 24 letter to Mr. Miller it talked about updated and  
 25 finalized cost estimates.

Page 1060

1 JOHN LEASE - CROSS  
 2 THE ARBITRATOR: Yes. Which item?  
 3 MR. ZUROFSKY: I am looking at on  
 4 the chart on number 3. One up from fall  
 5 control.  
 6 Q. You provided in that chart an  
 7 estimate of \$160,000, Mr. Lease?  
 8 A. Yes.  
 9 Q. So if we go to tab 38 again, which  
 10 is the numbers to date it is talking about  
 11 construction of the hazardous building. That is  
 12 line 74.  
 13 A. Yes.  
 14 Q. It says now \$255,000; right, sir?  
 15 A. That's correct.  
 16 Q. And 56 --  
 17 THE ARBITRATOR: That is in tab  
 18 38?  
 19 MR. ZUROFSKY: Yes, line 74 of the  
 20 chart.  
 21 A. I will point out there is at least  
 22 one other category that deals with storage of  
 23 hazardous substances under waste water section.  
 24 There were numerous locations in the facility  
 25 where we stored hazardous chemicals. So St.

Page 1061

1 JOHN LEASE - CROSS  
 2 Cosme had a project at that time underway to  
 3 build a hazardous waste storage building, as  
 4 well as contain other hazardous chemical storage  
 5 location in a more secure manner.  
 6 This points out at the time we  
 7 visited this site these issues were  
 8 noncompliance with EHS regulations. That is the  
 9 main focus of this chart.  
 10 If the cost estimates provided in  
 11 here were not right on target at the time, so be  
 12 it. However the underlying basis for these  
 13 projects was noncompliance, which was  
 14 indemnifiable under the agreement.  
 15 Q. Let's go back to our framework of  
 16 the three types of notice we talked about,  
 17 Mr. Lease; right. So you just said the main  
 18 purpose of this chart was to provide Fairchild  
 19 with notice there was noncompliance; right?  
 20 A. Yes.  
 21 Q. That is noncompliance, that is a  
 22 condition, that is notice of a condition that we  
 23 talked about earlier; right? Here is a  
 24 condition it is noncompliance; right?  
 25 A. Yes.

Page 1062

1 JOHN LEASE - CROSS  
 2 Q. There is some reference in this  
 3 chart to corrective actions; right?  
 4 A. Correct.  
 5 Q. Did you understand Mr. Miller to be  
 6 asking you when he is talking about cost updates  
 7 and whatnot, to be asking you for more  
 8 information about that, the second category,  
 9 what are we going to do about it category?  
 10 A. Let me look at Mr. Miller's letter.  
 11 THE ARBITRATOR: What is the tab  
 12 on Miller's letter?  
 13 MR. ZUROFSKY: Tab 8, I believe.  
 14 It might be tab 7. Sorry, tab 7 of the binder.  
 15 A. I believe that actually is -- I am  
 16 looking at the letter, tab 13.  
 17 Q. Tab 7 is the one I think we're  
 18 talking about.  
 19 A. Okay.  
 20 Q. Tab 7 he says, second paragraph,  
 21 "Please provide us with specific and complete  
 22 background documentation supporting the items  
 23 and costs provided in the table." Right,  
 24 Mr. Lease?  
 25 A. That is what he says, yes.

8 (Pages 1059 to 1062)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

Page 1063

JOHN LEASE - CROSS

Q. You said a minute ago there was a project undergoing at St. Cosme at that time to build a new building waste management building?

A. Yes.

Q. The project wasn't done without proposals and scopes of work and things like that; they just don't build a building?

A. I don't know as far as documentation what existed related to the building.

Q. Let's look forward, you pointed to tab 13, that is where I wanted to go next. Tab 13 in the binder is Mr. Miller's response to your April 8th letter in which you did say you would forward to Fairchild updated and finalized cost estimates right?

A. As they became available. If and as they became available.

Q. On tab 13 Mr. Miller responds to you; right?

A. Yes.

Q. He says this letter is in response to yours. He then, second sentence says "We understand that Alcoa is still developing final

Page 1064

JOHN LEASE - CROSS

action plans and cost data for these issues and we look forward to receiving that detail when it is available."

Then he says "Nevertheless, the further background detail which you provide are really no more than conclusory statements as to your rationale for including each of these issues."

The next paragraph Mr. Miller says "Has Alcoa performed further environmental assessments or engineering studies which would justify the estimated cost provided in the table? Your summary comments refer to assessments which have been made and to various findings of Alcoa. Please provide us with copies of any such assessments and of any reports, legal analyses or other documentation which support the various findings as listed in the table.

"Also please provide us with any documentation specifically supporting the cost estimates provided in the table." Do you see that, sir?

A. Yes.

Page 1065

JOHN LEASE - CROSS

Q. You never responded to that letter; did you?

A. At the time we exchanged this correspondence I had no further information in my possession that would support what Mr. Miller is requesting.

Furthermore, this was, this assessment at the facility, the gap analysis was done one month after acquisition. These issues were underway at St. Cosme. Mr. Miller's response to this letter indicates that he has absolutely no knowledge that any of this, any of these projects were underway.

THE ARBITRATOR: What was underway at St. Cosme before you bought the facility?

THE WITNESS: They had received a proposal for new waste water treatment facility due to the noncompliance issues. They had plans to construct new hazardous waste storage building to address noncompliance with hazardous chemical storage. They were addressing issues related to water use to come into compliance with the water use rules in France.

So, many of these projects that

Page 1066

JOHN LEASE - CROSS

were on the original table that I sent to Mr. Miller were in fact in progress at the time we purchased the facility.

THE ARBITRATOR: What about the other items like machine guarding and fall protection?

THE WITNESS: They had conducted a machine guarding assessment partially for their machines. They were under way at that time with correcting some of the deficiencies to correct the machine guarding issues. They also were performing noise analysis of the facility.

The only area where I wasn't sure that they were doing anything in particular was in the fall protection area.

Q. Mr. Lease, yesterday when Judge Stapleton asked you about the project, machine guarding project for which we had the survey, do you recall that?

A. For Fullerton?

Q. For Fullerton.

A. Yes.

Q. He asked you, he said which one of these were implemented. You said I don't know,

9 (Pages 1063 to 1066)

MERRILL LEGAL SOLUTIONS

(800) 325-3376

www.MerrillCorp.com

Page 1067

1 JOHN LEASE - CROSS  
2 that was done at the plant level, do you recall  
3 that?  
4 A. I believe, yes, that is what I  
5 said.  
6 Q. What makes you think Mr. Miller  
7 would know at corporate headquarters in Virginia  
8 about actions taken at the plant level you just  
9 described to Judge Stapleton?  
10 A. As I recall from looking at the  
11 information provided in our meeting in early --  
12 or late 2002 with Mr. Hodge, and Mr. Miramadi in  
13 Dulles, the information they provided indicated  
14 there was a process whereby the EHS issues  
15 within the corporation were discussed with Mike  
16 and senior management on a routine basis.  
17 Q. Mr. Lease, when Alcoa bought these  
18 facilities they bought the documents too; didn't  
19 it?  
20 A. I assume we did.  
21 Q. Right? At the plant.  
22 A. What was in the facility, we have.  
23 Q. Right. The documents at the plant.  
24 Did you do a search of Mr. Miller's office and  
25 Mr. Miller's files to say, hey, he has all the

Page 1068

1 JOHN LEASE - CROSS  
2 documents, I don't need to provide him any of  
3 the documents I promised to provide him? Did  
4 you?  
5 A. I think that is somewhat of a  
6 ridiculous question.  
7 Q. Did you?  
8 A. Did I inspect his office?  
9 Q. Do you know --  
10 THE ARBITRATOR: We will stipulate  
11 to that, he did not.  
12 Q. Do you know what files Mr. Miller  
13 had at corporate headquarters regarding these  
14 projects?  
15 A. No. I think it is reasonable to  
16 assume that officials that owned a company and  
17 operated a company two months before would have  
18 an understanding that they were planning to  
19 spend close to a million dollars on a waste  
20 water treatment plant at St. Cosme as part of  
21 capital project planning.  
22 I think they would understand and  
23 they did understand they had significant machine  
24 guarding issues. That clearly was a key focus  
25 of the discussion for the negotiation and sale

Page 1069

1 JOHN LEASE - CROSS  
2 of the facility.  
3 So, as I look at these letters,  
4 they appeared to me at the time to be simply  
5 request for information, very specific nature  
6 that Mr. Miller really had, you know, a clear  
7 understanding of. Or at least someone in  
8 Fairchild knew that these issues existed. We  
9 identified them as noncompliance. The facility  
10 had identified them as noncompliance. We were  
11 moving forward to correct them.  
12 Q. Anywhere, any of your letters or  
13 Mr. Harvey's letters does Alcoa say that, don't  
14 worry we are not providing documentation because  
15 you have it already?  
16 A. Did we tell them they should have  
17 known all of this?  
18 Q. Yes.  
19 A. I think it is implicit in any  
20 common understanding that previous owners of a  
21 facility that were working to correct  
22 noncompliance issues would not lose that memory  
23 two months after the sale.  
24 Q. Did you reply to Mr. Miller's  
25 letter on April 30 saying in sum or substance I

Page 1070

1 JOHN LEASE - CROSS  
2 believe you already have this documentation, it  
3 is just duplicative of what you already know?  
4 A. No, I did not.  
5 THE ARBITRATOR: As I understand  
6 it your position is that they essentially knew  
7 about all these issues. Do you know whether  
8 they had any studies or estimated cost to  
9 correct these, what steps could be taken to  
10 correct these deficiencies?  
11 THE WITNESS: It was my  
12 understanding they would have had that  
13 information, or at least knew what the plans  
14 were for these facilities.  
15 THE ARBITRATOR: But, in any  
16 event, you never gave them specific  
17 documentation as to what exactly you proposed to  
18 do and how much it was going to cost?  
19 THE WITNESS: For our actions?  
20 THE ARBITRATOR: Yes.  
21 THE WITNESS: For these  
22 particular items in the St. Cosme example we did  
23 not.  
24 THE ARBITRATOR: The ones we've  
25 been talking about.

10 (Pages 1067 to 1070)

Page 1071

Page 1073

JOHN LEASE - CROSS

THE WITNESS: Aside from what we quoted here, surveys and so forth. Yes.

THE ARBITRATOR: Okay.

Q. You said aside from the surveys, Mr. Lease?

A. Pardon?

Q. I just want to hear the last answer.

A. I mentioned aside from the estimates that we provided as documentation related to surveys and any other categories that we had in our --

Q. But not the surveys themselves?

A. Pardon?

Q. Not the surveys themselves?

A. Fall protection and -- I don't believe we provided that to Fairchild.

Q. How about surveys relating to any of the compliance issues?

A. There was subsequent correspondence where we filed claim letters, in essence that included background information to support the claim. I'm not sure what all is included in that.

Page 1072

JOHN LEASE - CROSS

Q. All in binder 1; right?

A. I don't know if all the attachments are in there. There is documentation attached to some of these letters.

Q. When you say claim letters, you mean notice of liability, in other words, here is money that has already been spent?

A. The money had been spent, yes.

Q. Back on tab 41. Remember we had our chart. We covered now the first two items, first two letters listed under other correspondence; right, sir?

A. Okay.

Q. We just looked at those; right?

A. Two letters about St. Cosme.

Q. Yes.

A. Yes.

Q. The third one, next one down, don't worry they repeat, so we won't have to go through every one of these, every entry here. The third one down is Toulouse; right?

A. That's right.

Q. Now that, I believe is in, perhaps counsel can help me, Mr. Chesler's binder.

JOHN LEASE - CROSS

MR. CHESLER: Sorry, which one?

MR. ZUROFSKY: Toulouse. The reference letter regarding June 13. I believe it is actually at tab 16.

MR. CHESLER: It is?

A. Tab 16?

Q. Yes.

A. Okay.

Q. This is another one of these letters with the chart, summary chart attached to it; right?

A. Right.

Q. This is for the Toulouse facility; right?

A. Yes.

Q. This is one of the letters that is referenced in Mr. Harvey's letter we looked at yesterday in which he said you will provide more complete documentation at a future time?

THE ARBITRATOR: What is the tab?

MR. ZUROFSKY: This is tab 16, your Honor.

Q. Just to refresh our state of play, here, Mr. Lease, you send this letter to

Page 1074

JOHN LEASE - CROSS

Mr. Hodge; right, in June of 2003?

A. Yes.

Q. Do you understand that Mr. Miller responded to this letter with a letter you looked at, similar letter to the one you looked at yesterday with Mr. Chesler, I believe it is actually at the next tab of your binder, tab 17?

A. Okay.

Q. Again, third paragraph of that letter Mr. Miller asked you for complete specific background documentation. He said "Such documentation should include copies of any assessments, reports, legal analysis or cost analyses prepared by or for Alcoa and any other documentation which support the various findings as listed in the tables included within your letter of June 13."

Do you recall that request?

A. I recall this. I am reading it right now.

Q. You recall yesterday we looked at a yesterday from Mr. Harvey responding to Mr. Miller's letter?

A. Yes.

11 (Pages 1071 to 1074)

Page 1075

1 JOHN LEASE - CROSS  
 2 Q. Mr. Harvey's letter is Exhibit 429,  
 3 Fairchild Exhibit 429. Mr. Harvey said he will  
 4 provide that documentation. Do you recall that?  
 5 A. That was Mr. Harvey's opinion, yes.  
 6 Q. But Mr. Harvey said it?  
 7 A. Said it in his letter, yes.  
 8 Q. On Alcoa letterhead?  
 9 THE ARBITRATOR: What is the tab  
 10 on Harvey?  
 11 MR. ZUROFSKY: That is the exhibit  
 12 we handed up this morning, Exhibit 429 which we  
 13 looked at yesterday. Let's just take a look at  
 14 that again to make sure we have the language.  
 15 It is dated August 13, 2003 to Mr. Miller.  
 16 Q. We looked at the language  
 17 yesterday, Mr. Lease. I will refresh everyone's  
 18 recollection where Mr. Harvey says "We will  
 19 provide Fairchild with further documentation to  
 20 support the estimates developed for the three  
 21 facilities." Those three facilities include the  
 22 Toulouse facility, Mr. Lease?  
 23 A. That's correct.  
 24 Q. The documentation is being compiled  
 25 for each project and will consist of such items

Page 1076

1 JOHN LEASE - CROSS  
 2 as scopes of work, consultant proposals, summary  
 3 reports.  
 4 THE ARBITRATOR: What paragraph?  
 5 MR. ZUROFSKY: Sorry, second  
 6 paragraph, the paragraph beginning "we will  
 7 provide."  
 8 THE ARBITRATOR: Yes.  
 9 Q. It says "This documentation is  
 10 being compiled for each project and will consist  
 11 of such items as scope of work, consultant  
 12 proposals, summary reports and invoices. We  
 13 will provide you with this documentation in a  
 14 timely manner once it is complete for your  
 15 review."  
 16 Do you see that, sir? Mr. Lease, do  
 17 you see that?  
 18 A. We're looking at Mr. Harvey's  
 19 letter?  
 20 Q. Yes. Exhibit 429. I handed it to  
 21 you this morning.  
 22 A. Yes.  
 23 Q. You are cc'd on that letter, right?  
 24 A. Yes.  
 25 Q. Did you ever call up Mr. Harvey

Page 1077

1 JOHN LEASE - CROSS  
 2 after that and say, whoa, I am not providing  
 3 that documentation?  
 4 A. No, I did not.  
 5 Q. So this is, we are back to the  
 6 Toulouse facility now, the chart at tab 16 of  
 7 your binder from Mr. Chesler.  
 8 I want to focus on a couple items  
 9 here. The second item down. Facility does not  
 10 have adequate number of access points for  
 11 emergency situations. Do you see that?  
 12 MR. ZUROFSKY: Your Honor, tab 16  
 13 on the chart, actually in the chart on tab 16, I  
 14 apologize, it is different. It is the first --  
 15 I actually have a different version of this  
 16 letter.  
 17 THE ARBITRATOR: It is a letter of  
 18 June 13, '03 from Mr. Lease.  
 19 MR. ZUROFSKY: Correct.  
 20 THE ARBITRATOR: To Mr. Hodge.  
 21 MR. ZUROFSKY: Correct. I have a  
 22 different version of this letter. I am  
 23 actually -- let's circle back to this. I want  
 24 to make sure we get the right thing. Let me  
 25 identify two issues, I will come back to them.

Page 1078

1 JOHN LEASE - CROSS  
 2 The first one, Mr. Lease, is,  
 3 parking lot upgrades, do you see that?  
 4 A. We are looking at the chart now?  
 5 Q. Yes.  
 6 A. Okay, I see it.  
 7 Q. We will look at parking lot  
 8 upgrades. Then the chart continues on; right?  
 9 On the second page, second to last item is  
 10 machine guarding.  
 11 A. Okay.  
 12 Q. Let's talk about the parking lot  
 13 update for a second. What was that project?  
 14 A. As I recall this was a project that  
 15 was mandated by the local regulatory agency  
 16 prior to our ownership. Because the parking lot  
 17 itself was creating a situation that hampered  
 18 the ingress and egress of emergency vehicles,  
 19 delivery of chemicals, lacked sufficient fire  
 20 control in form of fire hydrants. There was a  
 21 requirement in France that every employee have a  
 22 single parking space. And it did not meet that.  
 23 The net effect was it was creating  
 24 EHS issues related to hazardous chemical  
 25 transport, the ability of emergency vehicles to

12 (Pages 1075 to 1078)